MINUTES OF THE House COMMITTEE ON Federal and State Affairs

Held in Room 510-S, at the Statehouse at 2:45 ~~a.m.~~/p. m., on March 24, , 1975.

All members were present ~~except~~:

The next meeting of the Committee will be held at 2:45 ~~a.m.~~/p. m., on March 25, 1975.

These minutes of the meeting held on March 20, 1975 were considered, ~~corrected~~ and approved.

H. I. Van Bebber
Chairman

The conferees appearing before the Committee were:

Senator Crofoot
Senator Reilly
Senator Booth
Anthony Lopez, KCCR
Rev. Ed Kirtdoll, Topeka Human Relations Commission
Professor Dave Ryan, Washburn University
Eva Lou Martin, CCCB
Mr. Charles Nicolay, Kansas Builders
Mr. Dale Carver, Goodyear

The meeting was called to order by the Chairman, who displayed amendments to HB 2604, as suggested by the Assessment and Taxation Committee. Rep. Hayes explained that it tightens the bill in regard to appeals to the Board of Tax Appeals. The Chairman stated that the amendments had been discussed with Mr. Ensley of the Revisor's office and they make the bill clear insofar as appeals are concerned. It was moved by Mr. Hayes and seconded by Mr. Ward that the amendments be adopted. Motion carried. It was then moved by Mr. Morris and seconded by Mr. Cooper that the bill be reported favorably, as amended. Motion carried by a majority vote. Mr. D. Miller stated he believed instead of passing such legislation, the legislature ought to start providing funds for mandated programs, and asked that his objection be placed of record. Mr. Anderson asked to be recorded as voting in opposition.

Senator Crofoot appeared to discuss his SB 544, explaining that it provides for specialty advertising for retail liquor dealers. He stated that he had been accused of special interest legislation, but that for example when bankers introduce legislation, nobody suggests "special interest". He explained that he had declared a conflict when the vote was taken in the Senate.

The Chairman called for discussion on SB 454, dealing with billboard advertising. Mr. Hayes stated that testimony had indicated that they were only asking for advertising for manufacturers and distillers, and offered an amendment to make sure this is correct. He moved that the amendment be adopted, which motion was seconded by Mr. Cooper. Motion carried without dissent.

A proposed amendment was offered by Mr. R. Miller (see exhibit) which would in effect, ban all outdoor advertising after January 1, 1979. He moved the adoption of the amendment, which was seconded by Mr. D. Miller. Mr. Hayes inquired about a fiscal note, and Mr. R. Miller explained that it gives owners until 1979 to do something about it; and further stated that with the federal law, they will probably be banned anyway. After considerable discussion, the motion lost by a majority vote.

It was moved by Mr. Feleciano and seconded by Mr. Ungerer that the bill be passed as amended. Motion carried 9 to 7. Representatives Matlack and Anderson asked to be recorded as abstaining.

The Chairman called for action on SB 544, and there was no motion. Thereupon, Senator Reilly was introduced to discuss Senate Bills 504 and 507. He stated that the bills deal with Governor appointments and Senate confirmation; that they had reviewed a number of appointments subject to confirmation and appointed a sub-committee which had visited with the Governor; that 507 deletes some individuals and 504 requires Senate confirmation as listed in the bill; that they have no particularly strong feelings about this and would not strongly object to deleting some or adding some.

Senator Booth appeared on SB 97, explaining that he had introducted the bill after the summer hearings with the idea in mind of providing a solution to the backlog of cases, prevent further burden on the overloaded KCCR, and provide encouragement to the cities to pass ordinances and give strength to their own programs at home. It states that any city which adopts by reference the provisions of the Kansas Act Against Discrimination, would have the right of jurisdiction, but if no action is taken within 30 days, the KCCR may accept the complaint. Mr. Feleciano inquired if the Senator had conferred with the Civil Rights Commission on this bill and the Senator stated they had been aware of the bill from the beginning; that there was some objection which had been mostly resolved by Senator McCray's amendment.

There was considerable discussion, with Mr. Marshall suggesting that this is another unfunded program, and the Chairman pointed out that it is optional by the cities. Mr. Anderson expressed the fear that the local units could not be unbiased in their decisions.

Mr. Tony Lopez, Executive Director of KCCR, testified that they had advocated local people handling their own problems but that in some cases complainants prefer that local people not do the investigating because of the possibility of retaliation. He stated that there are some good things about the bill but thought the "exclusive jurisdiction" and "30 day time limit" might cause some problems. He offered two printed statements (see exhibits) on both SB 97 and 43. Mr. J. Slattery inquired about the experience of KCCR in working with local commissions and Mr. Lopez stated they have been working with Topeka and Wichita for a year and that as of March 1st, they have 16 completed investigations; that they have found them to be adequate.

Rev. Ed Kirtdoll, Director of the Topeka Human Relations Commission appeared in opposition to SB 97, and stated that he strongly supports the recommendations of the KCCR; that he does not believe in the addition of expenses to the cities because many do not have the resources; that most cities have the problem of adequate professional staffing. He

stated that he believes Senator Booth's real intent is camouflaged in this bill; that in talking about local jurisdiction he believes his intent is to weaken the law. Mr. J. Slattery inquired about the staff of Mr. Kirtdoll and he stated they have 20 people; that there are four investigators and also an 11 member board which reviews cases.

Professor David Ryan of Washburn University testified that he believes SB 43 is bad in its "exclusive jurisdiction" that city enforcement could go far astray; that when you give exclusive jurisdiction and no uniformity it is not good. He stated this bill is unlike what is being done on the national level; that the trend is for the state to provide supervisory power over the local commissions, and stated there are a lot of things that cannot be spelled out in statutes and which must be handled by Rules and Regulations. Dr. Ryan offered a list of cases which he had researched. (See Exhibit)

Eva Lou Martin, representing the Coordinating Committee of the Black Community, testified that from the black perspective, KCCR has stopped some of the racist practices in employment and housing; that most of the complaints they receive are referred to KCCR; that individuals should have a choice of places where they can complain and shouldn't be required to go to just one place.

Mr. Lopez stated that SB 43 is the product of an interim study and has some of the recommendations of the interim committee; that they are developing and working on ways of becoming more efficient and effective. He stated they are now notifying respondents within ten days of complaint, which was one of the concerns of the committee. He called attention to page 10, lines 21-30, and stated he thinks a 14 day limit could result in less conciliation. The Chairman pointed out that the parties can agree to extend the time. Mr. Lopez stated they prefer not to have time limits; that he feels the present law is adequate.

Professor Ryan stated he thinks such provisions are anti-respondent; that possibly the committee knows something about labor contracts and that an arbitrary time limit is not practical; that facts in these cases do not come to light necessarily within a time limit. He stated that he is opposed to the part in Sec. 5, page 14 which would allow each side to be open to the other. He stated this type thing is of adversary nature and it does not seem proper for KCCR to have to open their files. Mr. Hayes inquired if this means that the material of investigations are subject to the same privilege as lawyer-client, and Mr. Ryan stated he believes it does.

Mr. Charles Nicolay, representing the Kansas Builders, stated he appeared in support of SB 43; that he feels the respondent should be notified of complaints; that this can help solve some of the problems; that sometimes there may be cases where an employer himself might not be aware of discrimination on down the line; that this would give him an opportunity to make his own investigation and deal with the problem before it drags on and becomes a big issue. He stated he believes in the time limit concept because it tends to bring the problem to a solution much quicker. He called attention to page 16, Section 10, line 21, concerning compliance, and stated he feels that if a contractor is in compliance with the federal act that is compliance with the state act as well.

Mr. Dale Carver of Goodyear testified that he does not find the 14 day limitation unreasonable; that contrary to what Professor Ryan suggests, they do have time limits in their labor negotiations and it is his experience that no definite agreements are ever reached until near the end of the deadline. He stated that if after a complaint, an employer has been found at fault and must pay back wages, he sees no justification for allowing the employee to keep his unemployment compensation and still have full back wages, or benefits for which the employer has paid. He stated he saw this as putting a premium on filing complaints. He stated his company is a federal supplier and that in regard to employee records they are complying with the federal law; that if a complaint is filed after the six month period, they have destroyed their application record, which action is in compliance with the federal program. He stated that four months does not seem an unreasonable period in which a person could decide in he has a bonified complaint. He explained that they have relatively few people handling records for thousands of employees and after such a period of time it would be impossible for them to remember the individuals.

Mr. Marshall stated that he had heard of occasions when contracts expired and Goodyear continued to work on a day to day basis for as long as 30 days. Mr. Carver stated the law now provides for only 14 days. Mr. Morris inquired what happens when lay-offs occur under the affirmative action program, and Mr. Carver stated it didn't require lay-offs on any basis except seniority; that he has heard it is a problem for some companies but it has not been for Goodyear.

It was moved by Mr. Hayes and seconded by Mr. Morris that the minutes for March 20 be approved. Motion carried.

The meeting was adjourned.

PROPOSED AMENDMENT TO SENATE BILL No. 454 3-24-75

On page 1, by striking lines 1 to 20, inclusive;

On page 2, by striking lines 1 to 6, inclusive, and inserting in lieu thereof the following:

"Section 1. The legislature hereby finds and declares that the preservation and enhancement of the natural scenic beauty of this state is necessary to the public safety, health and welfare and that, in the public interest, it is necessary to regulate and restrict the use of outdoor advertising within this state.

"Sec. 2. (a) Unlawful outdoor advertising is the erection or maintenance of any outdoor advertising within the state, except the following:

"(1) Directional and other official signs and notices, which signs and notices shall include,but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by law;

"(2) signs, displays and devices advertising the sale or lease of the property upon which they are located;

"(3) signs, displays and devices advertising activities conducted on the property upon which they are located.

"Unlawful outdoor advertising is a class A misdemeanor.

"(b) "Outdoor advertising" means any device which is a writing, picture, painting, light, model, display, emblem, sign, billboard or similar device situated outdoors and which is so designed that it draws the attention of persons to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering or other trading is carried on.

"Sec. 3. K. S. A. 68-2232, 68-2233, 68-2235, 68-2237 and 68-2238 to 68-2243, inclusive, and K. S. A. 1974 Supp. 68-2231, 68-2234 and 68-2236 are hereby repealed.

"Sec. 4. This act shall take effect and be in force from and after January 1, 1979, and its publication in the statute book.";

In the title, by striking all of line 1 after the word "act"; by striking lines 2 and 3 and inserting the following: "relating to crimes and punishments; defining the crime of unlawful outdoor advertising; repealing K. S. A. 68-2232, 68-2233, 68-2235, 68-2237 and 68-2238 to 68-2243, inclusive, and K. S. A. 1974 Supp. 68-2231, 68-2234 and 68-2236."

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SENATE BILL NO. 97

By: Anthony D. Lopez, Executive Director
Kansas Commission on Civil Rights

March 24, 1975

BACKGROUND

The Kansas Commission on Civil Rights has supported the theory that local Human Relations Commissions should adopt enforcement type ordinances and seek case investigation training in an attempt to deal with complaints alleging unlawful discriminatory practices on a local level. The sponsor of this bill has indicated that Senate Bill No. 97 is designed to encourage cities to handle civil rights problems at the local level and to alleviate the case backlog of the Kansas Commission on Civil Rights.

There are currently twenty (20) cities in Kansas with some type of local Human Relations Commission or Committee of which nine (9) have full time professional staff. The cities of Topeka and Wichita have adopted the Kansas Act Against Discrimination by reference and have been pursuing complaint investigation for several months. Our compliance reports have indicated that due to these two local commission efforts we have been able to adopt sixteen completed investigations and findings on cases referred to Wichita and Topeka. This means that it will be some time before local commissions will be able to assist us appreciably with eliminating the backlog when these two cities alone made up almost 50% (312) of new complaints received in F.Y. 1974.

The following chart indicates that Kansas City, Kansas, and most of the smaller cities which have human relations commissions have deliberately rejected the adoption of an enforceable civil rights law. Its attendant implication of employment of professional staff may be a significant factor in the decisions of smaller cities to forego an enforceable ordinance. We have no way of guessing whether the adoption of Senate Bill No. 97 would cause any of the cities of Kansas to adopt such an enforceable ordinance.

LOCAL HUMAN RELATIONS COMMISSION IN KANSAS

No.	CITY	ORDINANCE DATES ENACTED	LATEST AMEND	PROF. STAFF	NO.OF COMPLAINTS REC'D BY K.C.C.R. FY 73	FY 74
1.	Lawrence	1961	1972	2	14	10
2.	Kansas City	1962	1965	2	69	154
3.	Coffeyville	1963			NA	NA
4.	Emporia	1963		1	6	9
5.	*Topeka	1963	1974*	16	55	152
6.	Manhattan	1964	1974	1	7	14
7.	Pittsburg	1965		Part-time	0	7
8.	Olathe	1967		1	NA	NA
9.	Parsons	1968			NA	NA
10.	Garden City	1968			NA	NA
11.	Leavenworth	1968			NA	NA
12.	Fort Scott	1968			NA	NA
13.	Winfield	1969			NA	NA
14.	Atchison	1969			NA	NA
15.	Liberal	1970			8	0
16.	Johnson County	1970			NA	NA
17.	Salina	1970	1973	1	13	0
18.	**Hutchinson	1970	1970*	1	17	24
19.	Chanute	1972			NA	NA
20.	*Wichita	1974	1974*	5	143	160

* This is an enforcement ordinance-adopted by reference, the Kansas Act Against Discrimination.

** The City of Hutchinson recently refused to amend their current ordinance to include remedies for complainant and the administrative public hearing process.

RECOMMENDATION:

The amended version of Senate Bill No. 97 has several ambiguous provisions which could lend itself to multiple interpretations.

I would recommend Senate Bill #97 be amended to include the following language which is similar to that appearing in Title VII of the 1964 Civil Rights Act, Section 706:

Section 1. Any city may by ordinance adopt by reference the provisions of article 10 of chapter 44 of the Kansas Statutes Annotated, known as the Kansas Act Against Discrimination.

Section 2. In the case of an alleged unlawful discriminatory act occurring in a City, which has such an ordinance described in Section 1, no charge based upon such act may be filed with the Kansas Commission on Civil Rights by the person aggrieved before the expiration of thirty (30) days after a complaint alleging such act has been filed with the civil rights commission of such city: Provided, that in the interest of expediting the processing of complaints alleging unlawful discrimination, the civil rights commission of such cities may enter into agreements or "memorandum of understanding" with the Kansas Commission on Civil Rights, which agreements may set forth the procedures of this relationship including a lengthening or shortening of the foregoing jurisdiction of such city civil rights commission.

STATE OF KANSAS

COMMISSION ON CIVIL RIGHTS

535 KANSAS AVE. TOPEKA, KANSAS 66603

PHONE (913) 296-3206

January 15, 1975

The Honorable Robert F. Bennett
Governor, State of Kansas
2nd Floor, State House
Topeka, Kansas 66612

Dear Governor Bennett:

The Kansas Commission on Civil Rights, in regular meeting in Wichita, Kansas, on Saturday, January 11, 1975, carefully reviewed the proposals contained in Senate Bill No. 43.

All commissioners concur that the present Kansas Act Against Discrimination contains the basic provisions for effective implementation of the Act. Certain additions in Senate Bill No. 43 we feel are beneficial and positive and address the shared concerns of the Legislature and the Commission.

We concur wholeheartedly with those provisions of Senate Bill No. 43 relative to Hearing Examiners. The addition of staff hearing examiners we forsee as conducive to early resolution and ultimate benefit to both respondent and complainant.

The Commission constantly works with staff to refine and improve procedures, both within the office and in the handling of complaints. On March 16, 1974, the Commission policy directed the staff to develop specific methods to reduce the backlog. A method was developed which resulted in substantial increase in case closing by January 1975. In July, 1974, the Finance Council approved the addition of two intake workers who are responsible for consultation with aggrieved persons relative to the nature of their grievance. The procedure approved by the Commission requires that all complaints received by the intake workers are reviewed by the legal staff before they are docketed.

The Rules and Regulations of the Commission, and more specifically 21-41-11, prescribe procedures which address many of the concerns voiced by the Legislature, and it is the intent of the

Commission to enforce this provision immediately. We believe that notice to respondents upon the filing of a complaint is wise. We therefore propose as an alternative to the provision in Senate Bill No. 43 that the Commission will notify the respondent of the filing of a complaint or a Commission Decision to investigate without complaint within ten (10) days of filing or decision by use of a form such as E.E.O.C. form #131, by certified mail.

The Commission is unanimous in support of the budget and the present Act with the above exceptions.

In response to your memo of December 10, 1974, this letter will serve to advise you of the Commission's position on the proposed legislation.

Sincerely,

H. Dean Miller
Acting Chairman

ADL/HDM:n
cc: All Commissioners
enc.

KANSAS COMMISSION ON CIVIL RIGHTS
535 Kansas Avenue - 5th floor
Topeka, Kansas, 66603

PERSON FILING COMPLAINT

THIS PERSON: (check one)

☐ Claims to be aggrieved

☐ Is filing on behalf of a person claiming to be aggrieved

☐ Is a Commissioner of K.C.C.R

TO:

Date of alleged violation: _____ Place of alleged violation: _____ Docket No.: _____

NOTICE OF CHARGE OF DISCRIMINATION

You are hereby notified that a complaint of discrimination under The Kansas Act Against Discrimination has been filed against you. Information relating to the date, place and circumstances of the alleged unlawful practice or practices is provided herein.

No action on your part is necessary at this time. However, if you wish to submit any information in writing, it will be made a part of the file and will be considered at the time we investigate this charge. Telephone communications cannot be made a part of the record.

You are advised that K.S.A. 44-1009 (a) (4) makes it unlawful to discharge, expel or otherwise discriminate against any person because such person has opposed any practices forbidden by the Kansas Act Against Discrimination or has filed a complaint under it.

You are further advised that under K.S.A. 44-1013 any destruction of records or other act which would prevent, impede or interfere with the investigation of this complaint is a misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than $500.00, or both such fine and imprisonment.

Because of the Commission's volume of pending work, we are unable to tell you when we can schedule investigation of this charge; we will, however, contact you at the earliest possible date.

BASIS OF DISCRIMINATION: ☐ Race ☐ Color ☐ Religion ☐ Sex

☐ Physical Handicap ☐ National Origin ☐ Ancestry

NATURE OF CHARGE

☐ Employment

☐ Refusal to Hire
☐ Termination
☐ Failure to Promote
☐ Demotion
☐ Retaliation
☐ Conditions of Employment
☐ Union Representation
☐ Referral Practices
☐ Exclusion, Separation or Segregation
☐ Other _____

☐ Public Accommodations or Governmental Agencies

☐ Denial of Service
☐ Differential Treatment
☐ Exclusion, Separation or Segregation
☐ Other _____

Proposed Modification to the Act Relative to Selected Areas of Interest Indicated By Proposal No. 35 (SENATE BILL NO. 43)

M E M O R A N D U M

TO: Kansas Commission on Civil Rights

FROM: David L. Ryan

SUBJECT: Proposed Modifications to the Act Relative to Selected Areas of Interest Indicated By Proposal No. 35

DATE: January 7, 1975

Considering the diverse interests expressed relative to statutory modifications of the Act in selected areas identified in legislative Special Committee on Federal and State Affairs Proposal No. 35, the following statutory revisions are indicated:

K.S.A. 1974 Supp. 44-1002; Last Paragraph

Proposal No. 35 provides modification (underlined) as follows:

> "Members of the commission on civil rights attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in ~~section 1 of this act~~ K.S.A. 1974 Supp. 75-3223. The commission shall employ a full-time executive director who shall be in the unclassified service of the Kansas civil service act, and who shall receive an annual salary fixed by the commission, with the approval of the state finance council. The commission shall employ such professional staff and full or part-time legal, stenographic and clerical assistance as shall be necessary to carry out the provisions of this act and fix the amount of their compensation. The commission shall employ at least one and not more than three full time hearing examiners to conduct hearings. Such hearing examiners shall be admitted to practice law before the supreme court of Kansas. The appointment and compensation of ~~the~~ legal counsel, except those members of the legal staff serving as hearing examiners, shall be approved by the attorney general."

My comments on Proposal No. 35:

1. "At least one" appears unnecessary because the entity described is a "full-time" hearing examiner. By definition, it is difficult to conceptualize less than at least one "full-time" identification, since anything less than one would not be consistent with the term. Secondly, if the intent is to require the Kansas Commission on Civil Rights to employ at least one, this appears a somewhat inappropriate method. The actual numbers and type of hearing examiners may be better determined and set in the appropriation - budget measures. Thirdly, are not part-time examiners precluded? I fail to see the logic in foreclosing to the commission the capability or option of utilizing two attorneys on a regular part-time basis to fill an examiner's slot. For example, what if it appears expeditious to run hearings in Wichita, Topeka and somewhere in Western Kansas at the same time, or what if the one full-time person becomes temporarily ill or tied up in a particularly protracted and difficult proceeding.

2. "Not more than three" is to be a matter which will necessarily be controlled at the appropriation - budget level anyway based on actual Commission need at any given time, so a limitation here appears inappropriate.

My Recommended Act Amendment for KCCR:

> Members of the commission on civil rights attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in ~~section 1 of this act~~ K.S.A. 1974 Supp. 75-3223. The commission shall employ a full-time executive director who shall be in the unclassified service of the Kansas civil service act, and who shall receive an annual salary fixed by the commission, with the approval of the state finance council. The commission shall employ such professional staff and full or part-time legal, stenographic and clerical assistance as shall be necessary to carry out the provisions of this act and fix the amount of their compensation. The commission may employ hearing examiners to conduct hearings. Such hearing examiners shall be admitted to practice law before the supreme court of Kansas. The appointment and compensation of the legal counsel, except those members of the legal staff serving as hearing examiners, shall be approved by the attorney general.

Comment:

The above amendment preserves the essence of the intended change, but by elimination of the use of the numerical perimeter and the term "full time" avoids the problems identified above. Everyone agrees full time hearing examiners are needed. Appropriately, the budgetary appropriation process is where the KCCR must annually justify according to actual need and the legislature annually determines the number of hearing examiners required.

K.S.A. 1974 Supp. 44-1004 (6)

Proposal No. 35 provides:

> "(6) To act in concert with parties in interest in the formulation of conciliation agreements and to include any term in a conciliation agreement as could be included in a final order under this act."

Amendment Recommendation for KCCR:

> (6) To promote, encourage and provide assistance in the formulation of conciliation agreements and to include any term in a conciliation agreement as could be included in a final order under this act.

My Comments:

"To act in concert with parties in interest in the formulation of conciliation agreements and to." The legislative committee apparently feels this will emphasize the conciliation process. I believe they are right, although I would suggest simple and direct language: "To promote, encourage and provide assistance in the formulation of conciliation agreements and..." The legislative version actually provides for less court enforceable safeguard than mine and at the same time creates needless ambiguities. For example, what is to act, "in concert?" Who are the "parties in interest" compared to the normal "parties" in a commission matter. Do third party intevenors or other third parties "in interest" as broadly understood now have a role in the conciliation process which by all other law is designed to be an informal confidential process between the immediate complainant and respondent?

K.S.A. 1974 Supp. 44-1005; Original First Paragraph

Proposal No. 35 provides (First Two Paragraphs):

> "Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice may, by himself or by his attorney-at-law, file a grievance alleging an unlawful employment practice or an unlawful discriminatory practice with the commission. The director or his designee shall then assign the grievance to either a commissioner or a member of the staff for review. Such commissioner or staff member shall then meet with the person filing the grievance to determine if a reasonable basis exists for the filing of a complaint. Within three (3) days of the receipt of a grievance the director shall notify the respondent that a grievance has been received by the commission. Such notice shall be forwarded to the respondent by certified mail, return receipt requested, and shall state the nature of the grievance and the allegations of the person filing the grievance. If, in the opinion of the commissioner or staff member a reasonable basis does not exist on which to base a complaint, such commissioner or staff member shall inform the person filing the grievance and the respondent of his opinion. If, however, in the opinion of the commissioner or staff member a reasonable basis exists or if the person filing the grievance desires to file a complaint, a complaint shall then be filed.
>
> "The person desiring to file such complaint shall then either by himself or by his attorney-at-law make, sign, and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission."

Comments:

"File a grievance .. staff review ... reasonable basis ... notify respondent ... notify of (no reasonable basis) or ... file complaint ... then (execute and) file complaint." Apparently the feeling is that this will promote the conciliation process. While this measure is undobtedly well intended and indicates considerable merit in the abstract, its effect, when taken in context of all other required procedures and the current

size of the KCCR backlog appears to more likely provide a negative counterproductive impact to the complainant and the KCCR's processing of the complaint.

In the first place, by definition, the "grievance" is virtually identical by definition with the elements required for the complaint. A staff person is required to "review" the matter and "then .. meet" with the person. This requires considerable time for a staff person to first study a matter and it will require considerable supporting data from the aggrieved person sufficient for the staff to meet the "reasonable basis" determination. Note that the administrative finding is not simply that the grievance is in proper form or that a matter is alleged for which the commission has jurisdiction. Rather the staff must make an administrative finding of "reasonable basis," a substantive judgment, that must necessarily mean a judgment based on a sort of preliminary investigation of the circumstances surrounding the matter aggrieved. All of which will involve considerable staff time, even if all aggrieved persons lived in Topeka and the aggrieved matter occurred in Topeka and the respondent was in Topeka. Only in a minority of cases do the above three coalesce, so it is obvious that considerable travel time may be involved as well for the Commission's staff.

What is a "reasonable basis" for the grievance? We have considerable difficulty identifying the nature of and administrative findings necessary for the administrative "probable cause" step required for the complaint. The "reasonable basis" term does not have any readily established perimeters in our common law and is not susceptible to easy definition. Yet this ambiguous step is now an additional jurisdictional requisite for the viability of all Commission proceedings.

Notice is required "within three (3) days" to respondent, yet respondent has no duty or obligation at this stage. What role can respondent play in the grievance stage proposed here? There is, of course, the danger of retaliation from notice of an employee's complaint, a danger well recognized by the Kansas Supreme Court and the Federal courts as well, in refusing to require identification of class discrimination complaints to the respondents in the investigative stage. Atchison, Topeka and Santa Fe Railway Co. vs KCCR (No. 47,526, December 1974). Note the three (3) days pose an additional extremely short time line jurisdictional step required of Commission staff to maintain the validity of all subsequent proceedings.

We must also note that the prospective complaint time for filing is seriously shortened. There is the six (6) month statute of limitation, so the time for filing a complaint will obviously be reduced by the time the staff takes to complete the "grievance stage." What if the Commission has a year's backlog and can assign no staff even if the aggrieved person files soon after the act in question. More likely, because of equal opportunity grievance procedures now in effect with most employers, the person will delay some weeks or months in exhausting internal company grievance routes, so that the matter may come to the KCCR only shortly before the six (6) months period ends. If the person is restricted from filing a complaint and the KCCR cannot react to the "grievance" stage in time, then the aggrieved party may be denied relief as a result of this "grievance" stage.

In short, this grievance stage appears to:

1. add additional requirements or "hurdles" for the prospective complainant,

2. add several new jurisdictional requisites to KCCR proceedings,

3. add considerably to the need for staff and staff time,

4. increase the current backlog of complaint processing by forcing staff to this preliminary stage,

5. allow the prospective respondent to be put in a defensive posture long before staff has identified fully the relevant facts and long before conciliation is attempted, this perhaps allowing time for the defensive position to fix a psychologically negative posture at the conciliation procedings, and

6. duplicate the basic complaint investigation process.

Amendment Recommendation for KCCR:

First Alternative

No Amendment

Comment

No change is preferred to the present statute's first paragraph to avoid the problems identified above. The grievance procedure simply duplicates the complaint-probable cause-prehearing investigation stage presently provided by the Act. This procedure presently provided accords with the vast majority of

civil rights commissions' procedures of other jurisdictions; for example, see the Massachusetts Act, Section 5, Chapter 151B, although it is sometimes termed a "grievance procedure," e.g., the New Mexico Human Relations Act, Section 4-33-9, the Ohio Fair Employment Practices Law, Section 4112.05 (B), and the Minnesota Human Rights Act, Section 363.06 (1-3). For example, Minnesota provides that a grievance or "charge" be filed, then the probable cause finding, and then the "complaint" is issued, conciliation and then the contested hearing. Kansas now provides the same functional sequence, only the same terminology is not utilized at each stage.

Second Alternative:

> Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice may, by himself or his attorney-at-law, file a grievance alleging an unlawful employment practice or an unlawful discriminatory practice with the commission. A commissioner or a staff member may meet with the person filing the grievance to determine if a reasonable basis exists on the face of the grievance for the issuance of a complaint. If, in the opinion of the commissioner or staff member a reasonable basis does not exist on which to base a complaint, such commissioner or staff member shall inform the person filing the grievance of his opinion. If, however, in the opinion of the commissioner or staff member a reasonable basis exists or if the person filing the grievance desires to file a complaint, the grievance shall then be filed as a complaint by the commission.
>
> The person desiring to file a grievance shall either by himself or by his attorney-at-law make, sign, and file with the commission a verified grievance in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.

Comments:

If adoption of this grievance stage is imperative, then the "grievance" should be verified so that only this one filing would be necessary for the aggrieved party. No good reason appears to make a grievance required and then a verified complaint four (4) days later, unless considerable hardship is to be imposed on aggrieved parties. The meeting with the aggrieved party is made considerably more flexible and functional by eliminating the second sentence of the change proposed in No. 35. The three (3) day notice to respondent has been eliminated since a three(3) day notice of the complaint's filing has been required, infra. "On the face of the grievance" has been added to provide some legislative perimeter to the Commission activity at this very preliminary stage.

K.S.A. 1974 Supp. 44-1005; Third Paragraph

Proposal No. 35 provides:

> "After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall ~~prior to investigation~~, within three (3) business days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, he shall, within ten (10) business days from such determination, cause to be issued and served upon the complainant and respondent written notice of such determination."

Comments:

"Three (3) business days" provides another jurisdictional requisite in KCCR procedings to the benefit of the respondent. No good reason appears not to identify this notice and the three (3) day notice previously required in the grievance state proposed above in No. 35 the same way.

Amendment Recommendation for KCCR:

> After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall promptly within thirty (30) days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, he shall, within ten (10) days from such determination, cause to be issued and served upon the complainant and respondent written notice of such determination.

Comment:

Interest has been expressed in requiring by statute specific prompt complaint notice by the Commission as a jurisdictional requisite to further proceeding. No good reason appears to limit such an essential jurisdiction act to three (3) days. Three (3) days allows for virtually no human, clerical or other error by the Commission's staff.

Statutory time limitations at this stage do not appear in most jurisdictions, although the word "promptly" is sometimes utilized, e.g., New York Human Rights Law, Sec. 297 (2). In any event, a thirty (30) day maximum time limit seems more of a realistic limitation to impose.

K.S.A. 1974 Supp. 44-1005; Fourth Paragraph, First Portion:

Proposal No. 35 provides:

> "If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the said commissioner or such other commissioner as the commission may designate, shall ~~immediately~~ within ten (10) business days of such finding endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation."

Comment:

"Ten (10) days of finding": This new jurisdictional requirement appears troublesome in terms of requiring one of the "commissioners" to endeavor to eliminate the practice within ten (10) days of probable cause. This required execution of several steps by the KCCR very rapidly after probable cause - the designation of the conciliation commissioner and the "endeavor" to conciliate. What is "endeavor" as far as a jurisdictional step within ten (10) days? How much Commission activity is satisfactory to meet this new requirement? It is a meaningless requirement, i.e., would a mere "pro forma" conference with a respondent be sufficient or does this not, as it appears, create a substantive effort? Consider the possible negative impact in terms of the tight time line, the size of the Commission, and its statewide location of respondents. Also note that this section coupled with the following addition of quick conciliation functionally forces all investigation prior to the probable cause stage - that is if the Commission wants to be "prepared" at the quickie conciliation level now proposed.

Amendment Recommendation for KCCR:

> If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the said commissioner or such other commissioner as the commission may designate, shall promptly endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation.

Comment:

Because of the problems identified in the above comments, a time limitation appears particularly inappropriate here consequently none is recommended.

K.S.A. 1974 Supp. 44-1005; Fourth Paragraph, Last Portion

Proposal No. 35 provides:

> "The commission shall propose a conciliation agreement within (10) business days after such conference and forward the proposed agreement by certified mail, return receipt requested to both the complainant and respondent. The complainant and respondent shall have fourteen (14) business days from the date of the notice of such agreement in which to enter into a conciliation agreement. The parties may amend a conciliation agreement at any time prior to to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended.

NOTE: The following comment reflects the fact that S.B. 43 includes two sentences which were not in David Ryan's copy of Proposal No. 35.

Comment:

This section seems designed to effect one purpose, and that is to almost insure a great increase in the conciliation failure - contested hearing caseload of the Commission. It is certain that in strongly disputed and difficult matters, which is normally the case, the KCCR will have an enormous burden after the "quickie" conciliation conference now required above to draft a mutually agreeable document within ten (10) days. Such documents may take weeks or months of constructive conciliation effort, of proposals and counter proposals, and if progress is being made, why not? Note the ten (10) day requirement is coupled with a proposed agreement which is to be frozen for fourteen (14) days. The statute requires the parties either agree or disagree to "such agreement", i.e., the ten (10) day quickie conciliation proposal drafted as a result of the "ten (10) day" quickie conference. Nowhere else in our civil law do we find such a series of quick time line mandates.

The only functional reason for these quick times appears to be to facilitate a rush to contested hearing, a result contrary to the theoretical emphasis and preference for conciliation by these amendments.

Amendment Recommendation for KCCR:

None. Use present statutory provision.

Comment:

The foregoing observation of proposal identifies problems which will be created by any designated time limitation at this stage of the proceedings, so none is recommended.

K.S.A. 1974 Supp. 44-1005; Fifth Paragraph

Proposal No. 35 provides:

> "In case of failure...to answer the charges of such complaint at a hearing before at least four (4) commissioners, hereinafter referred to as hearing commissioners or before a staff hearing examiner, at a time not less than ten (10) business days after the service of said notice unless the respondent requests in writing and is granted a continuance. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred."

Comment:

"Respondent requests." No justification appears for allowing the respondent to request a continuance and not allowing a complainant the same privilege of at least requesting. This amendment epitomizes the one sided pro-respondent nature of the amendments generally.

Amendment Recommendation for KCCR:

> In case of failure...to answer the charges of such complaint at a hearing before at least four (4) commissioners, hereinafter referred to as hearing commissioners or before a hearing examiner, at a time not less than ten (10) business days after the service of said notice unless any party requests in writing and is granted a continuance. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.

Comment:

This provision simply allows both sides the same opportunity.

K.S.A. 44-1005; New Tenth Paragraph

Proposal No. 35 provides:

> "The findings of fact and order of the hearing examiner or hearing commissioner (sic) shall be submitted to the commission for approval, rejection or modification, in whole or in part, before being issued. Such findings of fact and orders, as approved or modified, in whole or in part, by the commission, shall when issued, be the findings of fact and orders of the commission."

Amendment Recommendation for KCCR:

> Same as Proposal No. 35

Comment:

This is an acceptable codification of the existing nature of the hearing examiner recommendation - Commission decisional process - common to most agencies.

New Section 5

Proposal No. 35 provides:

> "The respondent in any proceeding commenced under the provisions of the Kansas act against discrimination may bring a civil action in the district court against the complainant for malicious prosecution for the filing or prosecution of any complaint with the commission under this act, whenever under like circumstances an action for malicious prosecution would arise for filing or prosecution of an action or complaint in a court. All papers in the possession of the commission relating thereto shall be admissible."

Amendment Recommendation for KCCR:

> The respondent in any proceeding commenced under the provisions of the Kansas act against discrimination may bring a civil action in the district court against the complainant for malicious prosecution for the filing or prosecution of any complaint with the commission under this act, whenever under like circumstances an action for malicious prosecution would arise for filing or prosecution of an action or complaint in a court.

Comment:

Obviously a pro respondent measure which appears rather innocuous except for the last sentence providing for complete discovery of Commission files. This is potential trouble. Some of the Commission files and notes are gathered from the complainant in a confidential manner similar to attorney-client relationship and for all the very excellent reasons that we recognize the attorney-client relationship as privileged, so ought such files with the staff advocate for the complainant be privileged. If the last sentence were deleted, normal agency - court related discovery would prevail and this would be adequate and proper. Why provide the respondent in a civil rights case a greater base for malicious prosecution than provided generally for all malicious prosecution cases?

New Section 6

Proposal No. 35 provides:

> "Any person willfully, knowingly, and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation required by the Kansas act against discrimination shall be deemed guilty of perjury as defined by K.S.A. 1974 Supp. 21-3804 and any amendments thereto."

Amendment Recommendation for KCCR:

> No recommendation. No objection to proposal.

Comment:

This appears to duplicate existing applicable perjury law.

New Section 7

Proposal No. 35 provides:

> "If either party in a hearing required by this act has cause to believe and does believe that on account of the personal bias, prejudice or interest of any or all of the hearing commissioners or hearing examiner, such party cannot obtain a fair and impartial decision, such party shall request a change of commissioners or examiners. Such change request shall state the facts and the reasons for belief that bias, prejudice or an interest exists and shall be presented to the chairman of the commission.
>
> "The chairman of the commission shall then reassign the case to a different commissioner or examiner."

Amendment Recommendation for KCCR:

> If either party in a hearing required by this act has cause to believe and does believe that on account of the personal bias, prejudice or interest of any or all of the hearing commissioners or hearing examiner, such party cannot obtain a fair and impartial decision, such party may request a change of commissioners or examiners. Such change request shall state

> the facts and the reasons for belief that bias, prejudice or an interest exists and shall be presented to the chairman or the commission.
>
> If the chairman or commission finds there is bias, then the chairman or the commission shall then reassign the case to a different commissioner or examiner.

Comments:

No reason appears to require a mandatory reassignment upon mere allegation. Indeed the section is ludicrous. All a respondent need do is contend that each commissioner and hearing examiner is biased. There would simply be no one to hear the case. There is no functional reason nor common law reason to allow an allegation of bias alone to be the basis for change as proposed in No. 35.

The last sentence would be acceptable if it were modified by a proviso that if the chairman or Commission finds there may be a bias, prejudice or interest, then a change may be ordered.

New Section 8 (a)

Proposal No. 35 provides:

> "In any order entered against a respondent in a hearing conducted pursuant to the provisions of K.S.A. 1974 Supp. 44-1011 as amended, the commission may include the award of damages in an amount equal to wages lost from the date the discriminatory act occurred to the date the order was entered. Such orders shall bear interest from the day on which they are rendered at the rate of eight percent (8%) per annum. The total amount of damages awarded shall be reduced by the amount received by a complainant in the form of unemployment or other similar compensation."

Comment:

This section is vague and susceptible of several interpretations. The last sentence, while on its face appears clear that damages shall be reduced, is significantly ambiguous in the description "or other similar compensation." Does this include private - union unemployment funds? Should damages be reduced by funds to which the employee has previously contributed?

The greatest problem with this section is that it may be read as limiting all damages to such "lost wages." Needless to say, there is a universe of other types of damages that may be interpretated as precluded by this section.

Amendment Recommendation for KCCR:

> In any order entered against a respondent on the basis of an unlawful discriminatory practice or discriminatory housing practice, the Commission may award such damages to the person aggrieved by such practice as will effectuate the purposes of this act.

Comment:

Many jurisdictions now specifically provide damage authority by statute to their civil rights commission; for example, the New York Human Rights Law, Section 297 (4.c.), the Ohio Fair Employment Practices Law, Sec. 4112.05 (g), and the New Mexico Human Rights Act, Section 4-33-10 (e). The Minnesota statutes illustrates those jurisdictions which specifically provide for punitive damage authority in addition to compensatory damages, Minnesota Human Rights Act, Sec. 363.071 (.2).

Even in the absence of statutory authority, most courts indicate by common law development in states which have adopted the general language similar to Kansas, compensatory awards by administrative action have been allowed (Zahorian vs Russell Fitt Real Estate Agency, 62 N.J. 399, 301 A.2d 754 (1973); Williams vs Joyce, 4 Or. App. 482, 479 P.2d 513, 40 A.L.R. 3d 1272 (1971)). Decisions even allow an administrative agency to award damages for pain and suffering and humiliation beyond statutorily authorized compensatory damages on the theory that civil rights remedies must be liberally construed (State Comm'n for Human Rights vs Speer, 29 N.Y. 2d 555, 324 N.Y.S. 2d 297, 272 N.E. 2d 884 (1971); Massachusetts Comm'n Against Discrimination vs Franzaroli, 357 Mass. 112, 256, N.E. 2d 311 (1970)). The New Jersey statute is most similar to Kansas since it provides for "affirmative action including but not limited to..." (Zahorian, supra). The New Jersey court held the power to grant compensatory damages was to be fairly implied in light of the broad language of the section and the overall design of the act to be liberally construed. The word include is a word of enlargement and not of limitation. Zahorian holds the agency's power includes not only compensatory awards but incidental awards for pain and suffering as well.

Williams, supra, permits the recovery of compensatory damages and incidental damages for humiliation in a housing case since in a statutory context mental anguish as well as pecuniary loss could be the effect of discrimination. The Oregon Court of Appeals in Williams, supra, considered for the first time, whether an administrative agency has the power to award damages for racial discrimination from general and not specific statutory language, a situation similar to Kansas. Here, defendant landlords refused to rent an apartment to complainant because she was a Negro. An administrative award of $200 was made to complainant for humiliation, and an administrative award of $140 was rendered as contingent moving expenses. The Oregon court sustained the award for mental anguish and reversed the award for contingent moving expenses.

The Kansas civil rights legislation accords with New Jersey's, i.e., N.J.S.A. 10:5-2, 10:5-3 and 10:5-17 equal in part to K.S.A. 44-1001 and K.S.A. 44-1019 (d). In addition to Zahorian, supra, the Jackson vs Concord Company, 101 N.Y. Super 126, 243 A.2d 289 (1968), opinion is relevant in finding damage award power from a statutory phase virtually identical to the Kansas Act, K.S.A. 44-1019 (d).

Also standing for the proposition that an aggrieved party is entitled to damages for violation of a civil rights statute are the following cases: McCabe vs Atchison, Topeka and Santa Fe Railway Company, 235 U.S. 151 (1914); Bibb vs Alton, 209 Ill. 451, 70 N.E. 640 (1904); Gray vs Serruto Builders, Inc., 110 N.J. Super. 297, 265 A.2d 404 (1970); Williams vs Joyce, supra; Everett vs Harron, 380 Pa. 123, 110 A.2d 383 (1955); Randall vs Cowlitz Amusements, 194 Wash. 82, 76 P.2d 1017 (1938).

The Kansas Act Against Discrimination declares to be a civil right, the opportunity to obtain employment, public accommodations and housing without discrimination. To effectuate this declaration, the legislature armed the Commission with broad powers. Further, most complaining parties are not financially able to pay for protracted litigation and to deny awards for expenses resulting from respondent's discrimination will discourage pursuing legitimate complaints. Damages represent a more effective remedy than injunctive relief alone.

An additional reason for Commission damage authority is enunciated in Gillian vs City of Omaha, 331 F. Supp. 4 (D. Neb. 1971), rev. on other grounds, 459 F.2d 63 (8th Cir. 1972). In an action by a black youth counsellor for compensatory and punitive damages for alleged discrimination in employment, the court holds there are cases where such damages must be granted. Although punitive damages are repugnant to Nebraska's public policy and the state

civil rights act did not give the commission power to award such damages the court points out that:

> "It should be noted that while discrimination in employment on the basis of race, color, religion, sex or national origin, is made unlawful under the aforesaid statute (the Nebraska Fair Employment Practice Act) such discrimination is also unconstitutional under the Fourteenth Amendment to the United States Constitution. Thus, an act of discrimination on any such basis would at the same time be a violation of the state statute and the United States Constitution. Thus, when the Nebraska Equal Employment Opportunity Commission is called upon to consider such an act by an employer as an unlawful employment practice it is at the same time called upon to consider the act as a violation of the Federal Constitution.
>
> "This Court is of the view that while an award of punitive damages by the Commission is not required for a statutory violation, because such an award would be violative of Nebraska public policy, such an award is required whenever appropriate to fully preserve and protect any Federal constitutional right involved...
>
> "<u>If punitive damages are necessary to fully vindicate a Constitutional right, when that right is before a federal court, then such damages are every bit as necessary when that right is before a state administrative commission or a state court. Basic Federal Constitutional rights cannot be watered down by state statutes or state court opinions.</u>" (331 F. Supp. 4, 8. Emphasis Added.)

It is clear that 42 U.S.C. §1982 bars both public and private racial discrimination and that an action can be brought under it for racial discrimination in the rental of residential property (Jones vs Alfred H. Mayer Co., 392 U.S. 409, 88 S. Ct. 2186, 20 L.Ed. 2d 1189 (1968)). The Jones case refrained from deciding whether compensatory damages could be awarded for a violation of Section 1982. 392 U.S. at 414 n. 14. However, the Supreme Court said in Sullivan vs Little Hunting Park, Inc., 396 U.S. 229, 239, 90 S. Ct. 400, 405, 24 L.Ed. 2d 395 (1969):

> "The existence of a statutory right implies the existence of all necessary and appropriate remedies...A disregard of the command of the statute is a wrongful act and where it results in damages to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied..."

The Kansas Supreme Court has recognized the necessity and propriety of civil rights damages. It has expressly recognized in part that a civil rights complainant suing for equitable enforcement of a conciliation agreement may be allowed damages (Hutchinson Human Relations Commission vs Midland Credit Management, 213 Kan. 308, 517 P.2d 158 (1973):

> "We have not overlooked the several cases cited by amici curiae, Kansas Commission on Civil Rights, National Association for the Advancement of Colored People, American G.I. Forum and Kansas Human Relations Association, as recognizing the right of an aggrieved person to recover damages resulting from the violation of his civil rights. We have no quarrel with the underlying rationale of those cases, but the rule they espouse has no application here. In each of the cases cited by amici the action was brought by the individual whose civil rights have been violated to his personal prejudice and damage. The situation is quite different here. This action is maintained by the Hutchinson City Commission on Human Rights, a governmental agency. The individual who may have been personally aggrieved by Midland's alleged failure to employ her was Ms. Van Buren according to the record. She is not a party to this lawsuit in any capacity; she is not seeking monetary damages in compensation of any loss accruing to her." (Emphasis added at Kan. 317.)

If civil rights damage authority is inherently necessary and proper to effect justice, and if damages are necessary to fully vindicate a federal right then such damages are essential when that right is before the Kansas Commission on Civil Rights.

New Section 8 (b)

Proposal No. 35 provides:

> "In any appeal from an order of the commission entered pursuant to the provisions of K.S.A. 1974 Supp. 44-1011 the issue of damages shall be severable from all other issues in any proceeding commenced under the provisions of K.S.A. 44-1011."

Amendment Recommendation for KCCR:

> No such provision required.

Comment:

The effect of proposed Section 8 (b) is questionable. Damages would ordinarily be a separate issue from liability, even without this section. In this sense, the section is unnecessary. The only way apparent for this section to have impact would be to interpret it to separate the damage issue from the appeal process normally required, and if this were the case, significant appeal problems would be raised in district court.

Section (c) tends to support this as the new section's intent.

New Section 8 (c)

Proposal No. 35 provides:

> "The court may, where the verdict as to damages sustained by claimant do not support the amount awarded, vacate or modify the award."

Comment:

This section is open to considerable interpretation, but for it to be read consistent with the holding in the Jenkins vs Newman Memorial Hospital opinion and like cases, this section should be construed as simply saying a jury or court may find a lack of evidence or "reasonableness" to the agency finding. If this section were to be interpreted to allow a court redetermination of damages it would constitute a considerable change in the law of administrative review.

Amendment Recommendation for KCCR:

No such provision required.

Comment:

The court's scope of review is presently adequately identified by K.S.A. 44-1011 and is consistent with the virtually universal principles of court review of administrative actions.

New Section 9

Proposal No. 35 provides:

> "Any person (a) destroying any employment records required to be kept under the laws of the state of Kansas for the purpose of hindering any proceeding commenced pursuant to the provisions of the Kansas act against discrimination or (b) destroying any records or other information involved in any proceeding brought pursuant to the provisions of the Kansas act against discrimination for the purpose of hindering such proceedings, shall be guilty of a class B misdemeanor."

Amendment Recommendation for KCCR:

> Any person (a) destroying any employment records required to be kept under the laws of the state of Kansas or (b) destroying any records involved in any matter brought pursuant to the provisions of the Kansas act against discrimination, shall be guilty of a class E felony.

Comment:

Employment records misdemeanor. Interestingly, while the complainant is subject to a Class E felony (minimum 1-5 year prison plus maximum $5,000 fine), perjury charge for falsely identifying any data per new section 6 above, a respondent's intentional destruction of essential data is only a Class B misdemeanor (maximum 6 month jail and $1,000 fine). Both claimant and respondent should be treated alike.

Other Modifications in Proposal No. 35

Comment:

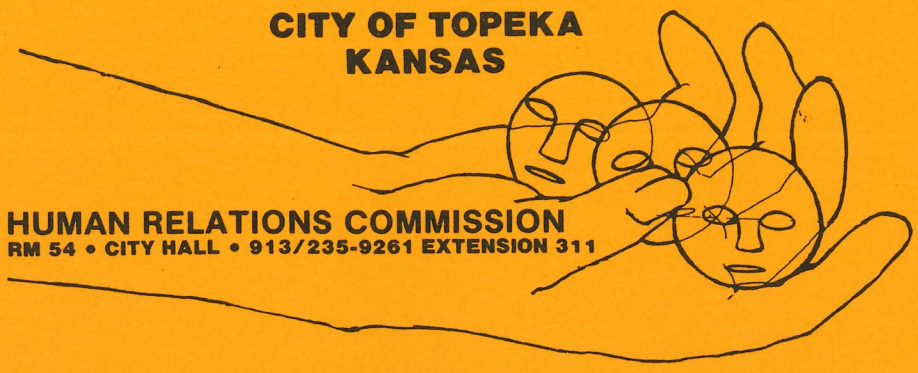
Statutory word modifications appear in Proposal No. 35 in addition to those identified above. Except as they are affected by the specific sections discussed above, they are generally minor improvements in the wording of the existing sometimes awkwardly structured legislation.

Conclusion

Proposal No. 35, if enacted without further modification, may pose significant problems for the Kansas Commission on Civil Rights as identified above. Generally, Proposal No. 35 modifies the Act into a pro-respondent structure. While fairness to the respondent must be insured, fairness to the aggrieved party must not be destroyed. The amendments recommended for the Kansas Commission on Civil Rights, basically in modification of Proposal No. 35, restores, maintains and insures a basic fairness to both parties before the Commission.

DLR:la

CITY OF TOPEKA
KANSAS



HUMAN RELATIONS COMMISSION
RM 54 • CITY HALL • 913/235-9261 EXTENSION 311

CIVIL RIGHTS ORDINANCES

Equality of opportunity is everyone's right under the law. This booklet was prepared to inform you of the laws devised to protect your rights. It contains Topeka City Ordinances #13531, #13538, #13588, #13447, and #13587 which have been edited to reflect an up-to-date continuous reading of ordinances pertaining to discrimination and the affirmative action program. Section I-120 1973 of the City Code is reprinted in part. The Memorandum of Understanding between the Kansas Commission on Civil Rights and the Topeka Human Relations Commission is also included.

ORDINANCES # 13531, #13538, #13588
(Edited)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA KANSAS:

Section 1. To receive and investigate complaints and to intiate its own investigations of racial, religious and ethnic group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby; to receive, initiate, investigate, pass upon and attempt to conciliate all complaints alleging discrimination, segregation or separation in employment, in public accommodations or in public housing because of race, religion, color, sex, physical handicap, national origin or ancestry; to apply to the District Court, after a complaint has been filed to enjoin violation of the ordinance; to apply to the District Court for enforcement of any conciliation agreement by seeking specific performance of the agreement; to receive and investigate complaints and to initiate its own investigations of discrimination against any person, group of persons, organization or corporation, whether practiced by private persons, associations, or corporation and when it is found that such discrimination is within the jurisdiction of the Kansas Commission on Civil Rights, it may be referred to that Commission.

Section 2. That section 17-1007d be amended to read as follows:
Same. To hold hearings, subpoena witnesses, take the testimony of any persons under oath and in connection therewith to require the production of any evidence relating to any matter under investigation or in question before the H.R.C. If a complaint is filed alleging discrimination as defined in Section 17-1002, H.R.C. shall investigate and determine whether or not probable cause exists to believe that the accused has discriminated. If after a complaint or upon its own initiative, H.R.C.'s investigation reveals that probable cause exists to believe that the accused has discriminated then H.R.C. may request the convention of a three(3) member hearing panel.
The hearing panel shall listen to all pertinent evidence presented by both H.R.C. and the accused and shall upon conclusion of the hearing make findings of fact and conclusions of law and issue orders based thereon. The rulings made by the hearing panel shall be binding upon all parties. Appeal from the decision of the hearing panel must be perfected in the same manner as provided in K.S.A. 44-1010-1011.

The three (3) member hearing panel shall be appointed as follows:
A joint committee consisting of four (4) Human Relations Commissioners, the Dean of Washburn Law school and three (3) law professors chosen by him shall recommend a group of five (5) attorneys to the City Commission; The City Commission shall then appoint three (3) members, the first appointee to serve for three (3) years, the second for two (2) yars and the third for one (1) year. Thereafter, each member of the hearing panel shall be selected in the same manner as above, except that the joint committee shall recommend only three attorneys to the City Commission, and his term shall be three (3) years.

Whenever a vacancy shall occur for a reason other than the end of a term, an attorney shall be appointed from a group of three (3) recommended by the joint committee for the unexpired term of the member he is succeeding. As compensation, the members of the hearing panel shall receive One Hundred ($100.00) Dollars each for each day they hear cases.

The members of the panel shall not be subject to removal unless cause is shown that he is incompetent or neglectful of duty. Any removal for cause can only take place after the hearing panel member has had a hearing before the entire City Commission and there has been a majority vote to remove said member.

The rules of evidence, as provided in Kansas Statutes, as well as provisions for discovery, as adopted in K.S.A. 1973, Supp. 60-266-237, shall be applicable to all proceedings under this section.

The City Attorney shall prosecute the case in behalf of the H.R.C. if the accused is not a city department.

In the event, the accused party is the City of Topeka, an agency or employee of the city and H.R.C. finds probable cause to believe a city department has discriminated, the H.R.C. shall obtain special counsel to prosecute for them and the City Attorney shall defend the accused city department.

Whenever H.R.C. desires a subpoena it shall confer with the city attorney's office, which office shall then issue subpoenas to the appropriate parties. Failure to comply with a subpoena, issued pursuant to this section, shall constitute a misdemeanor.

The hearing panel shall be empowered to assess costs of the action to the appropriate parties, as equity may require.

Section 3. The provisions of the following statutes and any amendments thereto, are hereby incorporated by reference as if the same had been set out in full herein;

K.S.A. 1972 Supp., 44-1004-1007, 1009-1013; 1015-1028; 1030-1034 and 1036-1037, except that wherever reference therein is made to the State of Kansas, the same shall be construed as referring to the City of Topeka, unless the sense thereof would be inconqruous, and wherever in such statues it relates to the "State", said reference shall be construed to be Topeka Human Relations Commission, and any reference to service at the Commission's office in Topeka, Kansas, shall be construed to require service on the Topeka Human Relations Commission at its office in Topeka, Kansas. All references therein to the Attorney General or County Attorney shall be construed to refer to the City Attorney. By no means shall the penalty for any of the unlawful acts, as specified in K.S.A. 44-1013, 44-1020 and 44-1027, exceed the limits established by Section 1-120B of the code of City of Topeka, 1973.

Provided, nothing in this article shall be construed to require the construction of any special facilities or fixtures for the physically handicapped.

Section 4. That this ordinance shall be subject to an agreement being executed between the Kansas Commission on Civil Rights and the City of Topeka; and said agreement shall be incorporated within this ordinance as though it were fully set out herein.

Section 5. That this ordinance shall be in full force and effect from and after the passage, approval and publication in the official city newspaper. However, this ordinance is subject to an agreement being executed between the Kansas Commission on Civil Rights and the City of Topeka.

MEMORANDUM OF UNDERSTANDING
BETWEEN KANSAS COMMISSION ON CIVIL RIGHTS AND
TOPEKA HUMAN RELATIONS COMMISSION

In order to provide for efficient cooperation and coordination of enforcement activities under the Kansas Act Against Discrimination (the "Act") and Topeka's Ordinance No. # 13531, the Kansas Commission on Civil Rights (the "Commission") and The Topeka Human Relations Commission (the "Agency") hereby enter into an agreement.

WITNESSETH:

WHEREAS, Kansas Commission on Civil Rights has such an enormous case load that there are ottentimes prohibitive delays in time from the time of filing a charge to the time of disposition of the case;

WHEREAS, the City of Topeka has passed an Ordinance which would permit it to conciliate complaints and obtain enforcement of same in the District Court;

WHEREAS, the Commission approves of the procedure set forth in the Ordinance by which the Agency processes any charges; and

WHEREAS, the Agency is capable of handling the complaints in a shorter span of time.

NOW, THEREFORE IT IS AGREED that the Commission designates and establishes the Agency as a local office of the Commission for the purpose of receiving and processing charges on behalf of the Commission, received from any person who feels he is an aggrieved party within the meaning of the Act. Whenever a complainant files a charge with the Commission, and the respondent is within the jurisdiction of the Agency, then the Commission shall defer the charge to the Agency. The Agency hereby designates the Commission to serve as its Agent for the purpose of receipt of the charge. The Commission will notify the charging party of the deferral and the date thereof and will advise him that he should cooperate with the Agency so that the Agency will be able to determine whether the charging party has a basis upon which to file a complaint under local ordinance and that the Commission will consider the charge to be filed with both the Commission and the Agency.

The Commission shall not commence the processing of any charge deferred to the Agency for 120 days from the date of such deferral. Where it appears to the Commission that the Agency will meet the standards of the Commission, the Commission will further refrain from actually processing the charge and will so notify the Agency. Where the Agency has timely begun its proceedings and expects to complete processing of the charge within a reasonable time, it may request an extension and such requests will be honored by written acceptance in the absence of compelling reasons for earlier Commission action.

In the course of investigations of charges or complaints the Commission and

the Agency shall have access to relevant information in the possession of the other, including investigative files with respect to the same or related cases, and for this purpose representatives of the Commission and the Agency shall be permitted to copy or obtain copies of pertinent documents and to utilize the same in proceedings under the Act or the Agency's ordinance. However, the Commission and the Agency agree that information on conciliation attempts will not be made public where such disclosure will be contrary to the statutory provisions or policies applicable to conciliation proceedings. Provided, however, the sharing of information on conciliation by the Agency and the Commission with each other shall not be deemed to be making such information plublic.

The Agency will forward to the Commission all final findings of facts, conclusions of law and orders made thereon on any deferred charge, together with a summary of the investigation thereof. The Commission shall review the findings of fact, conclusions of law and orders made thereon only to the extent of determining reasonableness and sufficiency. Provided, the Commission shall accept and be bound by any Conciliation Agreements made between the parties of the complaint as long as the terms of the agreement are equal to or more stringent than the standards set by the Commission in order to effectuate the policy of the Act. Provided further, that in any specific case where the Commission has reason to believe that the conclusions of law are not consistent with the Kansas law, the Commission may give written notice of those reasons to the Agency and decline to accept the orders based thereon. Such notice must be given within 30 days after the Agency forwards to the Commission copies of any final findings and orders to which it desires the Commission to adopt.

There is attached hereto an Appendix consisting of ____ exhibits which is made a part hereof be reference. Agency agrees, in the processing of all deferred charges and charges of parties evidencing a desire to file a complaint with the Commission, to use such forms in the manner prescribed by the Commission.

This memorandum of understanding is entered into for the express purpose of insuring the civil rights of all the persons within the State of Kansas as guaranteed by the Constitution and Laws of the State and of the United States. To this end it is imperative that complaints of the violation of such rights be investigated as completely and expeditiously as possible. Therefore, in all its particulars this agreement shall be liberally construed so as to promote the rapid and efficient processing of complaints.

Either party may cancel this memorandum of understanding at any time by furnishing the other party with 120 days written notice of its intention to cancel this memorandum of understanding. Provided, that neither party shall defer charges to the other 30 days after written notice of intentions to cancel this memorandum of understanding has been received.

CITY CODE 1-120, 1973 (in part)

1-120 Scope of Application; General Penalty

(a) The doing of any of the acts or things prohibited, made unlawful, or misdemeanor, or the failing to do any of the things commanded to be done, as specified and set forth in this code, within the jurisdictional limits of the City of Topeka, shall be deemed an offense against the good order, public peace, morals, health, proper government and welfare of said City.

(b) Whenever any offense is declared by any provision of this code, absent a specific or unique punishment prescribed, the offender shall be punished in accord with this section:

Fine. Not less than one-dollar (1.00) or more than four hundred ninety-nine ($499); or

(2) Imprisonment. In the City Jail for not more than one hundred seventy-nine days (179)) or

(3) Both. Fine and imprisonment not to exceed (1) and (2) above.

(c) Each day any violation of this code continues shall constitute a separate offense.

(d) Any person convicted of violating any of the duties set forth in subsection (a) shall be deemed guilty of a misdemeanor and punished in accordance with subsection (b). (Code, 1957; Code, 1970; Code, 1973).

ORDINANCE NO. 13447 & 13587
(Edited)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. Declaration of Policy. The practice of policy of discrimination against individuals by reason of race, sex, religion, color, national origin, ancestry, or physical handicap is a matter of concern to the City of Topeka, since such discrimination threatens not only the rights and privileges of inhabitants of the City but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the City of Topeka, in exercise of its police power for the protection of the public safety, public health, and general welfare, for the maintenance of business and good government, and for the promotion of the City's trade and commerce to eliminate and prevent discrimination, segregation, or separation because of race, sex, age, religion, color, national origin, ancestry or physical handicap. It is further declared to be the policy of the City of Topeka to assure equal opportunities and encouragement of every person regardless of race, sex, age, religion, color, national origin, ancestry or physical handicap in securing and holding without discrimination employment in any field of work or labor for which he is properly qualified, to assure equal opportunities to all persons within this City to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, sex, age, religion, color, national origin, ancestry or physical handicap.

Section 2. Affirmative Action Program Defined. "Affirmative Action Program" is a positive program designed to insure that a good faith effort will be made to employ applicants and to treat employees during employment equally without regard to their race, age, color, creed or religion, physical handicap, national origin, ancestry or sex. Such program shall include where applicable, but not be limited to the following: Recruitment and recruitment advertising, employment, upgrading promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetable for implementation of the program. The words "applicants" and "employees" as used herein shall include subcontractors as well as individuals.

Section 3. Affirmative Action Program for City Personnel. (a) It is the policy of the City to take affirmative action equal employment for all minorities and women in all personnel actions and procedures including, but not limited to, recruitment, hiring, training, transfer, and promotion, compensation and other benefits. (b) General Objectives:

1. Intensify efforts to recruit minorities and women applicants for every level of responsibility.

2. Develop special training programs to qualify persons for beginning level positions and for advancement.
3. Develop procedures for monitoring the application flow, final hiring and disposition of minorities and women.

Section 4. Same. (c) The City will designate the Director of Human Relations Commission as the Equal Opportunity officer to coordinate the City's efforts in the implementation of its affirmative action program and to advise and assist key staff in said implementation. (d) All administrative personnel and department heads will be responsible for carrying out all aspects of the affirmative action program within their division or department. The Human Relations Commission shall be responsible for development of recruitment and training programs to include hiring goals for each city department. (e) Duties of the Equal Opportunity Officer:

1. Conduct departmental reviews as necessary or indicated by reports, to determine compliance with the City's affirmative action program.
2. Report to the Human Relations Commission and the Mayor results obtained with the affirmative action program, problems encountered, resistance or failure to implement the policy of the City and recommend remedies.
3. Serve as a consultant and resource person to the Mayor, City Councils and/or department heads in the development of recruitment programs, selection procedures, training programs, or other personnel functions to implement the City's affirmative action program.
4. Play a leadership role in establishing liaison between the City and minority communities.

Section 5. Same. (f) Dissemination of Policy:

1. The City policy of affirmative action shall be communicated by the Mayor to all personnel in City government.
2. The affirmative action policy shall be posted on all bulletin boards in areas where employed personnel will be aware of such policy.
3. The policy shall be sent to all appropriate recruitment sources. The intent of the policy shall be communicated with all letters or invitations for persons to submit resumes for consideration for employment.
4. During orientation of new personnel, the city's affirmative action program shall be emphasized. A printed brochure explaining all aspects of the policy will be provided to all new employees.
5. The policy of the City shall be forwarded to minority and women group leaders and organizations and churches; and particularly those composed of minority populations, schools, contractors, sub-contractors, suppliers, and other agencies.

Section 6. Same. (g) Recruitment and Selection. All Departments shall:

1. Recruit personnel in such a manner that clearly demonstrates the City's interest in the employment of minorities and women.
2. Establish communication with educational institutions, organizations, leaders, or spokesmen which encourage referral of qualified minorities and women applicants for positions which may become available in the City government.
3. Indentify minority referral sources in Topeka and/or within the scope of the recruitment area.
4. Consider applicants on the basis of those able to be qualified to perform the job. If minorities and women applicants have qualifications to perform the job, they shall be given equal consideration for employment with any other applicant.

Section 7. Same. (h) Audit procedures:

1. The Human Relations Driector shall prepare an annual affirmative action report including all personnel within each department. This report will indicate numbers of persons employed, position of employment, race, and sex.
2. A position interview record shall be completed by any hiring authority or those interviewing applicants for positions of employment indicating race, sex, source of recruitment, and if not hired, reason for failure to employ. These records are to be maintained in the Human Relations Commission's Office.
3. Each Department shall prepare a monthly report (list) of new employees, transfers, and promotions, and terminations indicating the personnel who have resigned, retired, were fired or released by reduction of work force, noting in each case the race, sex and position of employment of position change. The report shall include all personnel of the city and should include a statistical summary of new employees, transfers, promotions, and terminations by race and sex. The report shall be filed with the Mayor.

Section 8. Same. (j) The requirements of this Affirmative Action Program shall be supplemental to and additional to the requirements of Section 2-1301 of this Article.

Section 9. Affirmative Action Program for Public Contracts.

(a) Submission of program. Prior to entering any contract with the City of Topeka, all persons seeking such contract shall submit in writing to the Director of Human Relations an affirmative action program. Such affirmative action program shall be submitted concurrently with or prior to any contract bid or proposal. Said affirmative action program shall be submitted in the form of answers to a specific written questionnaire; which shall be provided by the Director of Human Relations, provided, that if any person shall fail or refuse to submit affirmative action program as required by this Section, such person shall be ineligible to enter into any City contract or to receive any contract from the City until he has so complied.

Section 10. Same. Review by Director of Human Relations.

1. Affirmative action programs. The Director shall receive and review affirmative action programs submitted to him, and shall specify in writing any modification of the program needed to make it conform to the requirements of this Section. Provided; that prior to rejection of any program the Director shall advise and consult with the person submitting such program for the purpose of assisting him to develop an acceptable affirmative action program. In any event, the Director shall notify the Mayor in writing of his determination withing five (5) working days of the Director's receipt of the program.
2. Optional annual submissions. Any person who so desires may file annually an affirmative action program which shall apply to all bids or proposals which such person shall make during the calendar year next succeeding the date of such filing. Such annual submission shall be subject to review by the Director of Human Relations and shall be amended at such time and in such a manner as the Director of Human Relations may require.

Section 11. Same. (c) Acceptance of Program. The final determination of acceptance or rejection of the affirmative action program shall be made by the Board of Commissioners.

(d) Contract Conditions.

1. Any person who has been awarded a contract shall not discriminate against any person in the performance of work under the contract because of race, sex, religion, age, color, national origin, physical handicap, or ancestry, except by reason of demonstrably valid occupational disqualification.
2. In all solicitations, or advertisements for employees, the contractor shall include the phrase; "Equal Opportunity Employer" or a similar phrase to be approved by the Director of Human Relations.
3. If the contractor fails to comply with the provisions of this chapter, the contractor shall be deemed to have breached the contract and it may be rescinded, terminated, or suspended in whole, or in part, by the Board of Commissioners.
4. The contractor shall include the provisions of this section in every sub-contract so that such provisions will be binding upon such sub-contractor.

Section 12. Same. The requirements of this Affirmative Action Program shall be supplemental to and in addition to the requirements of Section 2-130 of this Article, the provisions of the Standard Technical Specifications for Street, Sewer, and Miscellaneous Construction of the City of Topeka, Kansas, and the Minority Construction Agreement of Northeast Kansas, as amended.

Section 13. Human Relations Commission to Administer. The Director is hereby authorized and empowered to:

1. Affirmative Action Program - Review Eligibility Certification. To receive, review, and recommend approval or rejection of affirmative action programs submitted by persons seeking any City contract and to certify eligible persons to the City.
2. Compliance Investigation. To initiate investigations into, to survey and review any and all affirmative action programs and contracts subject to this Section, and to take such action with respect thereto as shall insure compliance with the terms of this Section; subject to approval of the Mayor.
3. Conciliation. To attempt to eliminate any unlawful practice or any alleged violation of the terms of this section by means of conference, conciliation, persuasion and negotiation.
4. Initiate Complaints. To initiate, file and process complaints alleging violations of this Section.
5. Complaint Investigation. To receive, investigate and rule upon, or pass processed complaints of violations of this Section.

Section 14. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

note: DATES OF ORDINANCE PASSAGE ARE AS FOLLOWS:

Ordinance 13531 passed February 12, 1974
Ordinance 13538 passed March 12, 1974
Ordinance 13588 passed July 1, 1974
Memorandum of Understanding signed - April 11, 1974
Ordinance 13447 passed June 28, 1973
Ordinance 13587 passed June 25, 1974

THE KANSAS ACT AGAINST DISCRIMINATION

STATE OF KANSAS

COMMISSION ON CIVIL RIGHTS

NOTE

The Kansas Act Against Discrimination was passed in 1953. The Act was amended in 1961 to prohibit discriminatory employment practices because of race, religion, color, national origin or ancestry. Since July 1, 1961, the Act has been administered by the Kansas Commission on Civil Rights.

The Kansas Act Against Discrimination was amended in 1963 to prohibit discrimination in hotels, motels, cabin camps and restaurants.

The 1965 Kansas Legislature amended the Act and broadened the definition of "employer" to include anyone who has four (4) or more employees. The same session of the Legislature widened the public accommodations coverage of the Act by extending it to include any place of public accommodation which caters or offers goods, facilities and accommodations to the public. The amended Act further listed bars, taverns, barbershops, beauty parlors, amusement parks, recreation parks, swimming pools, lakes, gymnasiums, mortuaries, cemeteries which are open to the public and public transportation facilities, as places of public accommodation covered by the Act.

The 1967 Kansas Legislature amended the Act, giving the Kansas Commission on Civil Rights the power to initiate complaints alleging discrimination in employment and public accommodations because of race, religion, color, national origin or ancestry. At the same time the Legislature gave the Commission the power of subpoena.

The 1970 Kansas Legislature further amended the Act in several ways. The Commission was given authority to conduct investigations without the filing of a formal complaint, the definitions of unlawful employment practices and of public accommodations were broadened, and discrimination in certain real estate transactions was prohibited. The Commission itself was enlarged to seven members by the 1970 Legislature.

The 1972 Kansas Legislature further amended the Act in three ways. The Commission was given authority to investigate complaints of sex discrimination, have a contract compliance program and to use hearing examiners for a public hearing.

In 1974, the Kansas Legislature prohibited discrimination in employment and public accommodations because of physical handicap but limited remedies for such discrimination. It also increased the compensation of the Commissioners.

The Kansas Act Against Discrimination

(Chapter 44, Art. 10, Kansas Statutes Annotated; L. 1953, ch. 249; amended, L. 1961, ch. 248; amended, L. 1963, ch. 279; amended, L. 1965, ch. 323; amended, L. 1967, ch. 284, 285; amended, L. 1970, ch. 192, 193; amended, L. 1972, ch. 194 amended, L. 1974, ch. 209.)

44-1001. Title of act; declaration of state policy and purpose. This act shall be known as the Kansas act against discrimination. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, safety, health and peace of the people of this state. The practice or policy of discrimination against individuals in employment relations, in relation to free and public accommodations or in housing by reason of race, religion, color, sex, physical handicap, national origin or ancestry is a matter of concern to the state, since such discrimination threatens not only the rights and privileges of the inhabitants of the state of Kansas but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the state of Kansas to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation, or separation in all places of public accommodations covered by this act, and to eliminate and prevent discrimination, segregation or separation in housing.

It is also declared to be the policy of this state to assure equal opportunities and encouragement to every citizen regardless of race, religion, color, sex, physical handicap, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which he is properly qualified, to assure equal opportunities to all persons within this state to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, religion, color, sex, physical handicap, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this act and the opportunity for full and equal housing are civil rights of every citizen.

To protect these rights, it is hereby declared to be the purpose of this act to establish and to provide a state commission having power to eliminate and prevent segregation and discrimination, or separation in employment, in all places of public accommodations covered by this act, and in housing because of race, religion, color, sex, physical handicap, national origin or ancestry, either by employers, labor organizations, employment agencies, realtors, financial insti-

tutions or other persons as hereinafter provided. (K. S. A. 44-1001, L. 1965, ch. 323, § 1; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1002. Definitions. When used in this act:

(*a*) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(*b*) The term "employer" includes any person in this state employing four (4) or more persons and any person acting directly or indirectly for an employer as herein defined, and labor organizations, nonsectarian corporations, and organizations engaged in social service work, and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a non-profit fraternal or social association or corporation.

(*c*) The term "employee" does not include any individual employed by his parents, spouse, or child, or in the domestic service of any person.

(*d*) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective-bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in relation to employment.

(*e*) The term "employment agency" includes any person or governmental agency undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

(*f*) The term "commission" means the commission on civil rights created and amended by this act.

(*g*) The term "unlawful employment practice" includes only those unlawful practices and acts specified in K. S. A. 44-1009 as amended, and includes segregate or separate.

(*h*) The word "hotel," "motel" and "restaurant" shall each have the meanings ascribed to them respectively by K. S. A. 36-101 and K. S. A. 36-301, and the term "public accommodations" shall include any person as defined herein, who caters or offers his goods, services, facilities, and accommodations to the public, but shall not include a nonprofit fraternal or social association or corporation.

(*i*) The term "unlawful discriminatory practice" means any discrimination against persons in a hotel, motel, cabin camp, restaurant or trailer court and the segregation against persons in a place of public accommodations covered by this act by reason of their race, religion, color, sex, physical handicap, national origin, or ancestry. The term "unlawful discriminatory practice" also

means any discrimination against persons in a bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary, cemetery which is open to the public or on any public transportation facility.

The term "unlawful discriminatory practice" also means any discrimination against persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.

The term "physical handicap" means the physical condition of a person, whether congenital or acquired by accident, injury or disease which constitutes a substantial disability, but is unrelated to such person's ability to engage in a particular job or occupation. (K. S. A. 44-1002; L. 1965, ch. 323, § 2; L. 1970, ch. 192, § 1; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1003. Commission on civil rights; membership; appointment; qualifications; chairman; terms; vacancies; quorum; compensation; director; salary; staff. There is hereby created a commission to be known as the commission on civil rights. Said commission shall consist of seven (7) members, two (2) of whom shall be representatives of industry, two (2) of whom shall be representative of labor, one (1) of whom shall be a person authorized to practice law in this state, one (1) of whom shall be a representative of the real estate industry, and one (1) of whom shall be appointed at large, to be known as commissioners, who shall be appointed by the governor, subject to the advice and consent of the senate, and one (1) of whom shall be designated by the governor as chairman, who shall preside at all meetings of the commission and perform all the duties and functions of the chairman thereof.

The commission may designate one (1) of its members to act as chairman during the absence or incapacity of the chairman, and, when so acting, the member so designated shall have and perform all the duties and functions of the chairman of the commission. The term of office of each member of the commission shall be for four (4) years and until his successor is qualified. Those presently members of the commission shall continue in office until expiration of their terms or until a vacancy occurs. The two (2) new members who are appointed on or after July 1, 1970, shall be appointed for terms of two (2) and four (4) years, respectively. Any member chosen to fill a vacancy occurring otherwise than by expiration of term, shall be appointed for the unexpired term of the member

whom he is to succeed. A majority of the then members of the commission shall constitute a quorum for the purpose of conducting the business thereof, except as hereinafter provided. Vacancies in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Members of the commission on civil rights attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in section 1 [75-3223] of this act. The commission shall employ a full-time executive director who shall be in the unclassified service of the Kansas civil service act, and who shall receive an annual salary fixed by the commission, with the approval of the state finance council. The commission shall employ such professional staff and full or part-time legal, stenographic and clerical assistance as shall be necessary to carry out the provisions of this act and fix the amount of their compensation.

The appointment and compensation of legal counsel shall be approved by the attorney general. (K. S. A. 44-1003; L. 1965, ch. 323, § 3; L. 1967, ch. 284, § 1; L. 1970, ch. 192, § 8; L. 1972, ch. 194; L. 1974, ch. 348; July 1.)

44-1004. Powers and duties of commission. The commission shall have the following functions, powers and duties:

(1) To establish and maintain its principal office in the city of Topeka, and such other offices elsewhere within the state as it may deem necessary.

(2) To meet and function at any place within the state.

(3) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this act, and the policies and practices of the commission in connection therewith.

(4) To receive, initiate, investigate, and pass upon complaints alleging discrimination in employment, public accommodations and housing because of race, religion, color, sex, physical handicap, national origin or ancestry.

(5) To subpoena witnesses, compel their appearance, require the production for examination of records, documents and other evidence or possible sources of evidence and to examine, record and copy such materials and take and record the testimony or statements of such persons. The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as

would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction: *Provided, however,* That the commission first complies with the provisions of article 15 of the Kansas bill of rights and the fourth amendment to the United States constitution relating to unreasonable searches and seizures. The commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, or to testify to any matter regarding which he may be lawfully questioned, the district court of any county may, upon application of the commission, order such person to comply with such subpoena or interrogatory and to testify; and failure to obey the court's order may be punished by the court as contempt. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he testifies or produces evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons.

(6) To include any term in a conciliation agreement as could be included in a final order under this act.

(7) To apply to the district court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement by seeking specific performance of such agreement.

(8) To issue such final orders after a public hearing as may remedy any existing situation found to violate this act and prevent its recurrence.

(9) To endeavor to eliminate prejudice among the various ethnic groups in this state and to further good will among such groups. The commission in cooperation with the state department of education shall prepare a comprehensive educational program designed for the students of the public schools of this state and for all other residents thereof, calculated, to emphasize the origin of prejudice against such groups, its harmful effects, and its incompatibility with American principles of equality and fair play.

(10) To create such advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuat-

ing the purposes of this act, to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, physical handicap, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the state.

(11) To accept contributions from any person to assist in the effectuation of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section.

(12) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, physical handicap, national origin or ancestry.

(13) To render each year to the governor and to the state legislature a full written report of all of its activities and of its recommendations.

(14) To adopt an official seal.

(15) To receive and accept federal funds to effectuate the purposes of the act, and to enter into agreements with any federal agency for such purposes. (K. S. A. 44-1004; L. 1965, ch. 323, § 4; L. 1967, ch. 285, § 1; L. 1970, ch. 192, § 2; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1005. Verified complaints by or for aggrieved persons; filing; investigation; determination; conference and conciliation; formal complaint; hearing; place; issuance of subpoenas; when; hearing; procedure; orders; rules of practice; limitation on time for filing complaints. Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice may, by himself or by his attorney-at-law, make, sign, and file with the commission a verified complaint in writing which shall state the name and address of the person, employer,

labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission upon its own intiative or the attorney general may, in like manner, make, sign and file such complaint. Whenever the attorney general has sufficient reason to believe that any person as herein defined is engaged in a practice of discrimination, segregation or separation in violation of this act, he may make, sign and file a complaint. Any employer whose employees or some of whom, refuse or threaten to refuse to cooperate with the provisions of this act, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

Whenever any problem of discrimination because of race, religion, color, sex, physical handicap, national origin or ancestry arises, or whenever the commission has, in its own judgment, reason to believe that any person as herein defined has engaged in an unlawful employment practice or an unlawful discriminatory practice in violation of this act, or has engaged in a pattern or practice of discrimination, the commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for the investigation of complaints: *Provided,* That the person to be investigated shall be advised of the nature and scope of such investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the commission may issue a complaint whenever the investigation has revealed a violation of the Kansas act against discrimination has occurred. The information gathered in the course of the first investigation may be used in processing the complaint.

After the filing of any complaint by an aggrieved individual, the commission, or by the attorney general, the commission shall prior to investigation of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, he shall, within ten (10) days from such determination,

cause to be issued and served upon the complainant written notice of such determination.

If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the said commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

In case of failure so to eliminate such practice, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, the said commissioner or the commission shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization, employment agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before at least four (4) commissioners, hereinafter referred to as hearing commissioners, at a time not less than ten (10) days after the service of said notice. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.

The complainant or respondent may apply to the commission for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the commission shall issue such subpoena.

The case in support of the complaint shall be presented before the hearing commissioners by one of the commission's attorneys or agents, or by private counsel, if any, of the complainant, and the commissioner who shall have previously made the investigation shall not participate in the hearing except as a witness, nor shall he participate in deliberations of the hearing commissioners in such case; and the aforesaid endeavors at conciliation shall not be received in evidence.

The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall appear at such hearing in person, with or without counsel, and submit testimony. Any individual or individuals filing a complaint

must appear in person at such hearing. The hearing commissioners or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The hearing commissioners shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable probative value shall be received. Reasonable examination and cross-examination shall be permitted. All parties shall be afforded opportunity to submit briefs prior to adjudication. The testimony taken at the hearing shall be under oath and be transcribed.

If, upon all the evidence in the hearing, the hearing commissioners shall find a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the hearing commissioners shall state their finding of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or such unlawful discriminatory practice and to take such affirmative action, including but not limited to the hiring, reinstatement or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organizations; the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this act, as, in the judgment of the hearing commissioners, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

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

If, upon all the evidence, the hearing commissioners shall find that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discriminatory practice, the hearing commissioners shall state their findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of the order shall be delivered in all cases by the commission to the complainant, to the respondent, to the attorney general, and to such other public officers as the commission may deem proper.

The commission may appoint a hearing examiner to conduct any hearing. Such hearing examiner shall be admitted to practice law

before the supreme court of Kansas and shall have the same duties, powers and obligations as hearing commissioners in conducting such hearing: *Provided*, That the findings of fact and order of the hearing examiner shall be submitted to the commission for approval, rejection or modification, in whole or in part, before being issued. Such findings of fact and orders, as approved or modified, in whole or in part, by the commission, shall when issued, be the findings of fact and orders of the commission.

The commission shall, except as otherwise herein provided, establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Said rules shall be available, upon written request, within thirty (30) days after the date of adoption.

Any complaint filed pursuant to this act must be so filed within six (6) months after the alleged act of discrimination. (K. S. A. 44-1005; L. 1965, ch. 323, § 5; L. 1967, ch. 285, § 2; L. 1970, ch. 192, § 3; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1006. Construction of act. The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this act shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, religion, color, sex, physical handicap, national origin or ancestry, unless the same is specifically repealed by this act. Nothing in the Kansas act against discrimination shall be construed to require the construction of any special facilities or fixtures for the physically handicapped. Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel. (K. S. A. 44-1006; L. 1970, ch. 192, § 4; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1007. Invalidity of part. If any clause, sentence, paragraph or part of this act or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this act and the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and the persons or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included. (L. 1953, ch. 249, § 7; June 30.)

44-1008. (L. 1953, ch. 249, § 8; Repealed, L. 1961, ch. 248, § 12; June 30.)

44-1009. Unlawful practices. (*a*) It shall be an unlawful employment practice:

(1) For an employer, because of the race, religion, color, sex, physical handicap, national origin or ancestry of any person to refuse to hire or employ, or to bar or to discharge from employment such person or to otherwise discriminate against such person in compensation or in terms, conditions, or privileges of employment; or to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business motive.

(2) For a labor organization, because of the race, religion, color, sex, physical handicap, national origin or ancestry of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, physical handicap, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

(4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this act.

(5) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of his race, religion, color, sex, physical handicap, national origin or ancestry; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, relgion, color, sex, physical handicap, national origin or ancestry.

(6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on-the-job, or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of race, religion, color, sex, physical handicap, national origin or ancestry, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.

(7) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.

(*b*) It shall not be an unlawful employment practice to fill vacancies in such a way as to eliminate or reduce imbalance with respect to race, religion, color, sex, physical handicap, national origin or ancestry.

(*c*) It shall be an unlawful discriminatory practice:

(1) For any person, as defined herein, being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this act because of race, religion, color, sex, physical handicap, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.

(2) For any person, as defined herein, whether or not specifically enjoined from discriminating under any provisions of this act, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

(3) For any person, as defined herein, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the race, religion, color, sex, physical handicap, national origin or ancestry of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof. (K. S. A. 44-1009; L. 1965, ch. 323, § 6; L. 1970, ch. 192, § 5; L. 1972, ch. 194; L. 1974, ch. 209; July 1.)

44-1010. Rehearing, when; effect of order changing original decision. Any party being dissatisfied with any order or decision of

the commission may, within ten (10) days from the date of the service of such order or decision, apply for a rehearing in respect to any matter determined therein; the application shall be granted or denied by the commission within ten (10) days from the date same shall be filed, and if the rehearing be not granted within ten (10) days it shall be taken as denied. If a rehearing be granted the matter shall be determined by the commission within thirty (30) days after the same shall be submitted. No cause of action arising out of any order or decision of the commission shall accrue in any court to any party unless such party shall make application for a rehearing as herein provided. Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable. No party shall, in any court urge or rely upon any ground not set forth in said application. An order made after a rehearing abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision. (L. 1961, ch. 248, § 7; June 30.)

44-1011. Enforcement of orders of commission; proceedings; judicial review; trial *de novo;* jurisdiction; appeals to supreme court. The commission, attorney general or county attorney, at the request of the commission, may secure enforcement of any final order of the commission by the district court of the county where the unlawful employment practice or unlawful discriminatory practice shall have occurred or where any person required in the order to cease and desist from an unlawful employment practice or unlawful discriminatory practice or to take any affirmative action resides or transacts business, through mandamus or injunction in appropriate cases, or by action to compel the specific performance of the order. Such proceedings shall be initiated by the filing of a petition in such court, together with a transcript of the record upon the hearing before the commission, and issuance and service of a copy of said petition as in civil actions. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings an order or decree, enforcing, modifying, and enforcing, as so modified, or setting aside in whole or in part, the order of the commission.

The attorney general, county attorney or any person aggrieved by an order made by the commission may obtain judicial review thereof in the said court by filing with the clerk of said court within thirty (30) days from the date of service of the order, a written appeal praying that such order be modified or set aside. The appeal

shall certify that notice in writing of the appeal, with a copy of the appeal, has been given to all parties who appeared before the commission at their last known address, and to the commission by service at the office of the commission at Topeka. The evidence presented to the commission, together with its findings and the order issued thereon, shall be certified by the commission to said district court as its return. No order of the commission shall be superseded or stayed during the proceeding on the appeal unless the district court shall so direct.

The court shall hear the appeal by trial *de novo* with or without a jury in accordance with the provisions of K. S. A. 60-238, and the court may, in its discretion, permit any party or the commission to submit additional evidence on any issue. Said appeal shall be heard and determined by the court as expeditiously as possible. After hearing, the court may affirm the adjudication. If the adjudication by the commission is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the commission for further disposition in accordance with the order of the court.

The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of judicial review of the order. The review shall be heard on the record without requirement of printing.

The commission shall be deemed a party to the review of any order by the court.

The jurisdiction of the district court of the proper county as aforesaid shall be exclusive and its final order or decree shall be subject to review by the supreme court as in other cases upon appeal within thirty (30) days of the filing of such decision. (K. S. A. 44-1011; L. 1965, ch. 323, § 7; L. 1967, ch. 285, § 3; L. 1970, ch. 192, § 6; July 1.)

44-1012. Posting of law and information. Every person, as defined herein, employer, employment agency and labor union subject to this act, shall keep posted in a conspicuous place or places on his premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this act and such other relevant information which the commission shall deem necessary to explain the act. (K. S. A. 44-1012; L. 1965, ch. 323, § 8; June 30.)

44-1013. Unlawful acts; penalties. Any person, as defined herein, employer, labor organization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this act, or shall willfully violate an order of the commission, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than one (1) year, or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment; but procedure for the review of the order shall not be deemed to be such willful conduct. (K. S. A. 44-1013; L. 1965, ch. 323, § 9; L. 1970, ch. 192, § 7; July 1.)

44-1014. (Repealed, L. 1972, ch. 194; July 1.)

SUPPLEMENTAL ACTS

44-1015. Discriminatory housing practices; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the context otherwise requires:

(*a*) "Commission" means the Kansas commission on civil rights.

(*b*) "Real property" means and includes (1) all vacant or unimproved land and (2) any building or structure which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy.

(*c*) "Family" includes a single individual.

(*d*) "Person" means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.

(*e*) "To rent" means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(*f*) "Discriminatory housing practice" means any act that is unlawful under sections 2 [44-1016] and 3 [44-1017] of this act.

(*g*) "Person aggrieved" means any person claiming to have been injured by a discriminatory housing practice or who believes that he will be injured by a discriminatory housing practice that is about to occur. (L. 1970, ch. 193, § 1; July 1.)

44-1016. Same; unlawful acts in connection with sale or rental of real property. Subject to the provisions of K. S. A. 1971 Supp. 44-1018, it shall be unlawful for any person:

(*a*) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or to refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable

or deny, real property to any person because of race, religion, color, sex, national origin or ancestry.

(*b*) To discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, national origin or ancestry.

(*c*) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, national origin or ancestry, or an intention to make any such preference, limitation, specification or discrimination.

(*d*) To represent to any person because of race, religion, color, sex, national origin or ancestry that any real property is not available for inspection, sale or rental when such real property is in fact so available.

(*e*) For profit, to induce or attempt to induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin or ancestry.

(*f*) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against him in the terms or conditions of such access, membership or participation, because of race, religion, color, sex, national origin or ancestry.

(*g*) To discriminate against any person in his use or occupancy of real property because of the race, religion, color, sex, national origin or ancestry of the people with whom such person associates. (L. 1970, ch. 193, § 2; L. 1972, ch. 194; July 1.)

44-1017. Same; unlawful acts as to real estate loans. It shall be unlawful for any bank, building and loan association, insurance company or other person, firm or enterprise, whose business consists in whole or in part in the making of real estate loans, to:

(*a*) Deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining real property because of the race, religion, color, sex, national origin or ancestry of: (1) Such person; (2) any person associated with such person in connection with such loan or other financial assistance or associated with him in connection with the purposes of such loan or other financial assistance; or (3) the present or prospective owners, lessees, tenants or occupants of the

real property in relation to which such loan or other financial assistance is to be made or given;

(*b*) Discriminate against any person in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the race, religion, color, sex, national origin or ancestry of: (1) Such person; (2) any person associated with such person in connection with such loan or other financial assistance or associated with him in connection with the purposes of such loan or other financial assistance; or (3) the present or prospective owners, lessees, tenants or occupants of the real property in relation to which such loan or other financial assistance is to be made or given; or

(*c*) Use a form of application for financial assistance, or to make any inquiry, or make or keep any record in connection with any such application which indicates, directly or indirectly, an intention to make any preference, limitation, specification or discrimination because of race, religion, color, sex, national origin or ancestry. (L. 1970, ch. 193, § 3; L. 1972, ch. 194; July 1.)

44-1018. Same; application of act to certain religious organizations and private clubs; owner's residence. Nothing in this act shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or ancestry. Nor shall anything in this act prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor shall anything in this act apply to rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. (L. 1970, ch. 193, § 4; July 1.)

44-1019. Same; administration of act; complaints; answer; notice; reference to local authority, when; duty of local agency; investigations by commission; conciliation; agreements; specific performance, hearings; cease and desist order; compliance. (*a*) The au-

thority and responsibility for administering this act shall be in the commission. Any person aggrieved may file a verified complaint with the commission. Such complaints shall be in writing, shall state the facts upon which the allegations of a discriminatory housing practice are based and shall contain such other information and be in such form as the commission may require. Complaints must be filed within one hundred eighty (180) days after the alleged discriminatory housing practice occurred, but may be reasonably and fairly amended at any time. The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. A respondent may file a verified answer to the complaint against him and with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his answers at any time.

(*b*) Upon receipt of any such complaint, the commission shall furnish within ten (10) days thereof a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Service of said notice shall be made in the manner prescribed by the code of civil procedure. Whenever a local fair housing ordinance provides rights and remedies for alleged discriminatory housing practices which are, in the judgment of the commission, substantially equivalent to the rights and remedies provided in this act, the commission shall refer to the appropriate local agency any complaint filed under this act which appears to constitute a violation of such local fair housing ordinance. The commission shall take no further action with respect to such complaint until thirty (30) days have elapsed since the complaint was referred to the local agency, or the local agency has completed its investigation, or the local agency requests the commission to assume jurisdiction or to assist it, whichever occurs first. The local agency shall inform the commission in writing of the status of the referred complaint at the end of the referral period or when the local agency has completed its investigation, whichever occurs first. The commission may take further action on the complaint if in its judgment the protection of the rights of the parties or the interests of justice require such action.

(*c*) If a complaint is not referred to a local agency as provided in subsection (*b*), or after the commission assumes jurisdiction of a complaint following such referral, the commission shall promptly commence an investigation thereof, in the manner provided in K. S. A. 1971 Supp. 44-1005 for investigating complaints of violations of the Kansas act against discrimination, to determine whether probable cause exists for crediting the allegations of the complaint

and shall, within ten (10) days of such determination, serve written notice on the person aggrieved of such determination.

If it is determined that probable cause exists for crediting the allegations of the complaint, the commission shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion which shall be held, insofar as possible, in the cities or other localities where the alleged discriminatory housing practices have occurred or about to occur. The commission is hereby authorized to enter into formal conciliation agreement which shall include the person aggrieved and the respondent as signatories. Such agreements may include in the provisions thereof any term or condition which may be included in a final order of the commission. Any of the parties to a conciliation agreement may apply to the district court of the county where the alleged discriminatory housing practice occurred, or was about to occur, for specific performance of any such agreement.

(*d*) If the commission is unable to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, a hearing may be held before the commission in the manner provided in K. S. A. 1971 Supp. 44-1005 for holding hearings under the Kansas act against discrimination. In any such hearing, the burden of proof shall be on the complainant. If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in or is engaging in any discriminatory housing practice, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from such discriminatory housing practice, and such order may direct a respondent to take such affirmative action as the commisison deems necessary to effectuate the intent and purposes of this act, including, but not limited to, the selling or renting of specified real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of real property. Within fifteen (15) days after an order is issued by the commission requiring or prohibiting action by a respondent, said respondent shall notify the commission in writing of the manner in which he has complied with the order. (L. 1970, ch. 193, § 5; L. 1972, ch. 194; July 1.)

44-1020. Same; subpoenas; witness fees; enforcement of subpoena; injunctive relief; unlawful acts, penalties. (*a*) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the

same limitations as subpoenas issued by the commission. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(*b*) Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are allowed witnesses in proceedings in district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by said respondent.

(*c*) Upon the request of the commission, and any time after a complaint has been filed with the commission and after a finding of probable cause, the district court within the county wherein the unlawful discriminatory housing practice is alleged to have occurred and which is the subject of the complaint, may grant temporary injunctive relief pending final determination of the matter by the commission.

(*d*) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his power to do so in obedience to the subpoena or lawful order of the commission, shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both such fine and imprisonment. Any person who, with intent thereby to mislead the commission, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document, submitted to the commission pursuant to subpoena or other order of the commission, or who shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or who shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one year, or both such fine and imprisonment. (L. 1970, ch. 193, § 6; L. 1972, ch. 194; July 1.)

44-1021. Same; actions for alleged discriminatory practice; trial *de novo;* records; transcript; costs; injunction or other, notice of action. (*a*) Within forty-five (45) days after the entry of an order by the commission pursuant to K. S. A. 1971 Supp. 44-1019 or within thirty (30) days after the commission has received written notification of the manner in which a respondent has complied with the commission's order, the commission or a person aggrieved may bring a civil action in the district court of the county in which the alleged discriminatory housing practice is alleged to have occurred or in which the respondent resides or transacts business,

but upon application by the person aggrieved and the commission, the attorney general or the appropriate county attorney may provide the attorney necessary to bring the action authorized herein. Such action may be brought to enforce said order of the commission, or to enforce any of the rights granted or protected by K. S. A. 1971 Supp. 44-1016 and 44-1017, insofar as such rights relate to the subject of the complaint with respect to which said order was issued. All such actions shall be heard by the court in a trial *de novo*. Upon application of any party to such action, the commission shall make available to all parties the records and information gathered during any investigation or hearing conducted pursuant to the authority granted by this act, except that any records or information concerning the commission's efforts to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion shall not be admissible as evidence in such action. If the respondent shall request a copy of the transcript of the hearing, he shall pay for the cost of its preparation.

(*b*) If the court finds that a discriminatory housing practice has occurred, or is about to occur, the court may, in its discretion, grant as relief any permanent, temporary or mandatory injunction, temporary restraining order or other proper order: *Provided,* That any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this act, and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this act, shall not be affected. Whenever a complaint shall be filed, or civil action commenced, under the provisions of this act, the commission may post notice thereof on any real property which is the subject of such complaint or action. (L. 1970, ch. 193, § 7; L. 1972, ch. 194; July 1.)

44-1022. Same; civil action by attorney general, when. Whenever the attorney general or any county attorney, within his county, has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this act, or that any group of persons has been denied any of the rights granted by this act and such denial raises an issue of general public importance, he may bring a civil action within six (6) months after the alleged discriminatory housing practice occurred in the district court where an action may be commenced pursuant to section 7 [44-1021] of this act, requesting such preventive relief, including an application for

a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this act. (L. 1970, ch. 193, § 8; July 1.)

44-1023. Same; assignment of case; expedition. Any court in which a proceeding is instituted under section 7 [44-1021] or 8 [44-1022] of this act shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited. (L. 1970, ch. 193, § 9; July 1.)

44-1024. Same; effect of city ordinances governing housing practices. Nothing in this act shall be construed to invalidate or limit any ordinance of any city in this state that grants, guarantees or protects the same rights as are granted by this act; but any ordinance of a city that purports to require or permit any action that would be a discriminatory housing practice under this act shall, to that extent, be invalid. (L. 1970, ch. 193, § 10; July 1.)

44-1025. Same; cooperation of commission with local agencies; agreements. The commission may cooperate with local agencies charged with the administration of local fair housing ordinances and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the commission in carrying out this act. In furtherance of such cooperative efforts, the commission may enter into written agreements with such local agencies. All such agreements and terminations thereof shall be made available to the public by the commission. (L. 1970, ch. 193, § 11; July 1.)

44-1026. Same; unlawful acts; enforcement of section. It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 2 [44-1016] or 3 [44-1017] of this act. This section may be enforced by appropriate civil action. (L. 1970, ch. 193, § 12; July 1.)

44-1027. Same; unlawful acts; penalties. Any person, whether or not acting under color of law, who by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(*a*) any person because of his race, religion, color, sex, national origin or ancestry and because he is or has been selling, purchasing,

renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any real property, or applying for or participating in any service, organization or facility relating to the business of selling or renting real property; or

(*b*) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:

(1) participating, without discrimination on account of race, religion, color, sex, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (*a*) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(*c*) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, religion, color, sex, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (*a*) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall, upon conviction, be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one (1) year, or both such fine and imprisonment; and if bodily injury results shall be fined not more than ten thousand dollars ($10,000) or imprisonment for not more than ten (10) years, or both such fine and imprisonment; and if death results, such person shall be subject to imprisonment for any term of years or for life. (L. 1970, ch. 193, § 13; L. 1972, ch. 194; July 1.)

44-1028. Same; severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (L. 1970, ch. 193, § 14; July 1.)

44-1029. Same; act supplemental. This act shall be supplemental to and a part of the Kansas act against discrimination. (L. 1970, ch. 193, § 15; July 1.)

44-1030. Contract compliance. Every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

(*a*) The contractor shall observe the provisions of the Kansas act against discrimination * and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin or ancestry;

(*b*) In all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

(*c*) If the contractor fails to comply with the manner in which he reports to the commission in accordance with the provisions of section 15 [44-1031] of this act, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

(*d*) If the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

(*e*) The contractor shall include the provisions of subsections (*a*) through (*d*) inclusively of the present section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vender. (L. 1972, ch. 194; July 1.)

44-1031. Same; recruitment and hiring. Every person as defined in K. S. A. 1971 Supp. 44-1002 (*a*) who wishes to enter into a contract which is covered by the provisions of K. S. A. 44-1030, shall, prior to entering into such contract, inform the commission in writing of the manner in which it shall recruit and screen personnel to be used in performing the contract. The report shall be made on forms to be supplied by the commission. The provisions of section 14 [44-1030] and section 15 [44-1031] shall not apply to any contractor who has already complied with the provisions set forth in the sections by reason of holding a contract with the federal government or a contract involving federal funds which as a provision of the contract requires compliance with equal opportunity regulations equal to or more stringent than those set forth in K. S. A. 44-1030 and K. S. A. 44-1031. (L. 1972, ch. 194; July 1.)

44-1032. Contract compliance review. The contracting agency shall be responsible for assuring compliance with the provisions of section 14 [44-1030] of this act. The commission, on its own motion

* See K. S. A. 44-1001, 44-1002, 44-1004, 44-1005, 44-1006, and 44-1009, where "physical handicap" was added to the phrase "because of race, religion, color, sex, national origin or ancestry" effective July 1, 1974.

or at the request of the contracting agency, may review compliance with the provisions of this act. In conducting such reviews, the commission may subpoena witnesses, compel their appearance, require the production for examination of records, documents and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons. The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction: *Provided, however,* That the commission first complies with the provisions of article 15 of the Kansas bill of rights and the fourth amendment to the United States constitution relating to unreasonable searches and seizures. The commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, or to testify to any matter regarding which he may be lawfully questioned, the district court of any county may upon application of the commission, order such person to comply with such subpoena or interrogatory and to testify; and failure to obey the court's order may be punished by the court as contempt. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he testifies or produces evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons. (L. 1972, ch. 194; July 1.)

44-1033. Same; initiation of charges. If the compliance review conducted by the commission reveals any violation of the Kansas act against discrimination, the commission may initiate a complaint and process such complaint in the manner provided for processing complaints of unlawful employment practices. The information gathered in the course of the compliance review may be used in processing the complaint. (L. 1972, ch. 194; July 1.)

44-1034. Same; formulation of rules and regulations. The commission may adopt, promulgate, amend and rescind suitable rules

and regulations to carry out the provisions of this supplemental act. (L. 1972, ch. 194; July 1.)

44-1035. Racial identification of state employees. Information concerning the racial identification of state employees shall be permanently maintained solely on the payroll tapes in custody of the state department of administration. Such information shall be retrieved from the payroll tapes only upon the written authorization of the commission and only in a form approved by the commission: *Provided, however,* That the department of administration may provide such information to the director of the personnel division in statistical form without the identification of specific individuals if the director of the personnel division shall make such request. (L. 1972, ch. 194; July 1.)

44-1036. Invalidity of part. If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (L. 1972, ch. 194; July 1.)

44-1037. Construction of act. The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. (L. 1972, ch. 194; July 1.)

44-1038. Act supplemental. The provisions of K. S. A. 44-1030-1038, inclusive, shall be supplemental to and a part of the Kansas act against discrimination. (L. 1972, ch, 194; July 1.)

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STATE OF KANSAS

COMMISSION ON CIVIL RIGHTS

Agency 21

COMMISSION ON CIVIL RIGHTS

Articles

21-1-1 to 21-12-1. (Authorized by K. S. A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 13, 14.—RESERVED FOR FUTURE USE

21-15-1 to 21-29-4. (Authorized by K. S. A. 1971 Supp. 44-1004, 44-1005, effective Jan. 1, 1972; revoked Jan. 1, 1974.)

Article 30.—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT

21-30-1. (Authorized by K. S. A. 44-1004 (3); effective Jan. 1, 1972; revoked Jan. 1, 1974.)

21-30-2. "Test" defined. For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measure of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-3. Discrimination defined. The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by the Kansas act against discrimination constitutes discrimination unless:

(*a*) The test has been validated and evidences a high degree of utility as hereinafter described, and

(*b*) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-4. Evidence of validity. (*a*) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 21-30-3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(*b*) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc.

It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(*c*) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided,* That no significant differences exist between units, jobs and applicant populations. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-5. Minimum standards for validation. (*a*) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "standards for educational and psychological tests and manuals" published by American Psychological Association, 1200 17th Street N. W., Washington, D. C., 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not

feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(*b*) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates become technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of tests results, that are privately developed and/or are not available through normal commercial channels, must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include

measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups whenever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See 21-30-9.) A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(*c*) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including: (*a*) The larger the proportion of applicants who are hired for or placed on the job,

the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available. (*b*) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory. (*c*) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-6. Presentation of validity evidence. The presentation of the results of a validation study must include geographical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. [See 21-30-5 (*c*) concerning assessing utility of a test.] Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-7. Use of other validity studies. In cases where the validity of a test cannot be determined pursuant to 21-30-4 and 21-30-5 (*e. g.*, the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

(*a*) The studies pertain to jobs which are comparable (*i. e.*, have basically the same task elements), and

(*b*) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (*a*) and (*b*) of this section. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-8. Assumption of validity. (*a*) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumption of validity, based on test names or descriptive labels, all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(*b*) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-9. Continued use of tests. Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (*a*) The person can cite substantial evidence of validity as described in 21-30-7 (*a*) and (*b*); and

(*b*) He has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-10. Employment agencies and employment services. (*a*) An employment service, including private employment agencies, and state employment agencies, as defined in K. S. A. 44-1002 (*e*), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(*b*) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(*c*) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity [see 21-30-8 (*a*)]. An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 21-30-7. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-11. Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by the Kansas act against discrimination where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by the Kansas act against discrimination who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-12. Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-13. Other selection techniques. Selection techniques other than tests, as defined in 21-30-2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 21-30-4 and 21-30-5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-14. Affirmative action. Nothing in these guidelines shall be interpreted as diminishing a person's obligation under the Kansas act against discrimination to undertake affirmative action to ensure that applicants or employees are treated without regards to race, religion, color, national origin or ancestry. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by the Kansas act against discrimination. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-15. Word-of-mouth recruiting. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not recruit ex-

clusively or even primarily by means of word-of-mouth referrals from present employees or present members. (Authorized by K. S. A. 1971 Supp. 44-1004 and 44-1005; effective Jan. 1, 1972.)

21-30-16. Preference to relatives, friends or neighbors of present employees or members. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not give preference in hiring or in admission to membership to relatives, *friends or neighbors* of present employees or present members by reason of such relationships. (Authorized by K. S. A. 1972 Supp. 44-1004 and 44-1005; effective Jan. 1, 1974.)

21-30-17. Pre-employment inquiries and practices. K. S. A. 44-1009 (*a*) (3) prohibits, among others, the following pre-employment or pre-membership inquiries and practices:

(*a*) Inquiry into the birthplace of an applicant, the applicant's spouse or parents or any other close relative.

(*b*) Any requirement that an applicant submit a birth certificate, naturalization or baptismal record with his application.

(*c*) Any requirement or suggestion that an applicant submit a photograph with his application or at any time before he is hired.

(*d*) Inquiry into the name and address of any relative of an adult applicant other than applicant's spouse or children.

(*e*) Any inquiry into organization memberships, the name or character of which could indicate the race, religion, color, national origin or ancestry of the applicant. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-18. Affirmative action file. (*a*) *Affirmative action file, need and use.* Where affirmative action to increase the opportunity of minority groups for employment appears necessary to eliminate the effects of past pattern or individual discriminatory practices on the part of certain respondents and to assure future compliance with the Kansas act against discrimination, the commission may require and order per K. A. R. 21-45-21 an employer to maintain and utilize the application of potentially qualified minority group members in an "'Affirmative Action File" when the Commission has determined that such affirmative action is necessary to effectuate the purposes of the law. Before consulting other sources for applicants the commission may require that the respondent will give every consideration to the hiring of applicants from this file.

(*b*) *Minority.* "Minority" as used here means any person against

whom an employer has been or is discriminating based upon race, color, religion, sex, national origin or ancestry.

(*c*) *Provisions.* The affirmative action file provision in any conciliation agreement or commission order may provide, but is not limited to, the following provision:

"Affirmative Action File:

"1. Applications of members of minority groups which are not accepted or rejected per subpart (*c*) (4) hereof, shall be placed in a file, to be known as an Affirmative Action File. This file shall consist of all minority group applicants who are qualified for any position with the respondent, and those applicants whose qualifications have not been established.

"2. As job vacancies occur, the respondent shall consult the Affirmative Action File to determine if qualified applicants are available from the minority group members listed therein.

"3. Before consulting other sources for applicants, the respondent will give every consideration to the hiring of applicants from this file.

"4. If, after further review at the time a vacancy is available, the respondent concludes that the applicant is not qualified and cannot become qualified for any job within respondent's employ, he should remove his name from the file and notify him and the appropriate organization and agencies as identified in the commission order or conciliation agreement. If the applicant is still considered qualified, the respondent shall note on the file the date of each review and the reason for rejection. If the respondent is of the view that certain steps taken by the applicant could qualify him for employment, it shall so inform the applicant and the referring and sending institution, in writing, maintaining a copy in his file.

"5. The operation of the file shall be reported as provided by the commission." (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-30-19. Recruitment and referral agencies. (*a*) *Public and private services.* Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers "to establish continuing relationships with referral sources which may include, but is not limited to,

(1) Public referral services and agencies; and

(2) Private referral agencies and services, including those operated for profit."

(*b*) *Recruitment.* To the extent where necessary to eliminate the continuing effects of prior discrimination the commission may require employers to advertise vacancies and non-discriminatory hiring practices. (Authorized by K. S. A 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-30-20. Temporary employment. Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers to hire its summer, seasonal or any other temporary employees on the same basis as permanent employees. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Article 31.—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN OR ANCESTRY

21-31-1. Construction of BFOQ exemption. The bona fide occupational qualification exemption of K. S. A. 44-1009 (*a*) (3) shall be strictly construed as it pertains to cases of national origin or ancestry. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-2. Covert and overt discrimination. The Kansas act against discrimination is intended to eliminate covert as well as the overt practices of discrimination, and the commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the commission have been denied equal opportunities for reasons which are grounded in national origin or ancestry considerations. Examples of cases of this character include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English language skill is not a requirement of the task to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin or ancestry; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized by persons of a given national origin or ancestry; denial of equal opportunity because their name or that of their spouse reflects a certain national origin or ancestry; and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weights where such height and weight specifications are not necessary for the performance of the work involved. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-3. Protection of noncitizens. The Kansas act against discrimination protects all individuals, both citizens and noncitizens, domiciled, residing or transient in the state of Kansas, against discrimination in employment, public accommodations and housing because of race, religion, color, national origin or ancestry. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-4. Protection of national security. Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled, residing or transient in the state of Kansas may not be discriminated against on the basis of his citizenship, except that it is not an unlawful practice for an employer to refuse to employ any person who does not fulfill the requirements imposed in the interest of federal or state security pursuant to any statute of the United States or the state of Kansas or pursuant to any executive order of the president or the governor respecting the particular position or the particular premises in question. (Authorized by K. S. A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

Article 21-32.—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

21-32-1. Sex as a bona fide occupational qualification. (*a*) The bona fide occupational qualification exceptions as to sex should be interpreted narrowly. Labels—"men's jobs" and "women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The commission will find that the following situations do not warrant the application of the bona fide occupational qualification exceptions:

(*a*) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(*b*) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(*c*) The refusal to hire an individual because of the preference of co-workers, the employer, clients or customers.

(*d*) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification unless the expense would be clearly unreasonable.

(2) State laws and regulations which prohibit or limit the employment of females, *e. g.*, the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, or for more than a specified number of hours per day or per week, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female workers in our economy. The commission will find that such laws and regulations do not take into account the capabilities, preferences and abilities of the individual female and tend to discriminate rather than protect. Accordingly, the commission has concluded that such laws and regulations conflict with the Kansas act against discrimination and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(*b*) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-2. Fringe benefits. "Fringe benefits," as used herein includes medical, hospital, accident, life insurance and retirement benefits; profit sharing and bonus plans; leave and other terms, conditions and privileges of employment.

(*a*) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(*b*) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principle wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of the household" or "principle wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the act.

(*c*) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of

male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is the situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(*d*) It shall not be a defense to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(*e*) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages on the basis of sex, or which differentiates in benefits on the basis of sex. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-3. Separate lines of progression and seniority systems. (*a*) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male" or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(*b*) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex could reasonably be expected to perform. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-4. Discrimination against married women. (*a*) the commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by the Kansas act against discrimination. It does not seem to us relevant that the rule is not directed against all females, but

only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex. This rule also applies to unmarried women who happen to be mothers for example; in many instances women who have small children in the home are denied employment. Such discrimination usually takes place at the initial employer's screening process through the asking of such questions as "How old are your children? How many children do you have? What are your plans for providing care for your children?"

(*b*) An employed woman should not have her employment terminated when she marries a man who works for the same business or institution by whom she is employed. At the same time, a woman should not be denied employment by an employer due to rules against nepotism if she is otherwise qualified to perform the required work. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-5 Pre-employment inquiries as to sex. Pre-employment inquiry may ask "Male . . ., Female . . .;" provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-6. Pregnancy and child birth. (*a*) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is prima facie discrimination.

(*b*) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom, are for all job related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(*c*) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such termination is discriminatory if it has a disparate impact on employees of one sex and is not justified by business necessity.

(*d*) Childbearing must be considered by the employer to be a justification for a leave of absence for female employees for a reasonable period of time. Following childbearing, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay without loss of service, credits, seniority or other benefits. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1 1974.)

21-32-7. Affirmative action. The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded. Such affirmative action may include but is not limited to notifying employment referral agencies that women are welcome to apply for all positions recruiting at women's colleges and the use of advertising which is not classified by sex. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1, 1974.)

21-32-8. Job opportunities advertising. It is a violation of the Kansas act against discrimination or a help wanted advertisement to indicate a preference, limitation, specification or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such columns headed "Male" or "Female," will be considered as an expression of preference, limitation, specification or discrimination based on sex. (Authorized by K. S. A. 44-1004 (3) and K. S. A. 1972 Supp. 44-1009; effective Jan. 1 1974.)

Articles 21-33.—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

21-33-1. (*a*) *Statement of purpose.* The guidelines in this part have been adopted to contribute to the implementation of nondiscriminatory personnel policies with respect to employee religious beliefs as required by the Kansas act against discrimination. The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their policies concerning employee religious

beliefs conform with the basic purposes of the elimination of discrimination in employment as defined by the act.

(*b*) *Observance of Sabbath and other religious holidays.* Regarding whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days, the commission finds that the duty not to discriminate on religious grounds, under the act, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer. Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable. The commission will review each case in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the people of Kansas. (Authorized by K. S. A. 1972 Supp. 44-1004 and 44-1005; effective Jan. 1, 1974.)

Articles 34 to 39.—RESERVED FOR FUTURE USE

Article 21-40.—GENERAL PROVISIONS

21-40-1. Definitions. Incorporated by reference are the definitions of K. S. A. 44-1002. In addition, the following words and terms shall have the following meaning:

(*a*) "Acting executive director" means the person appointed by the commission to perform the functions, powers and duties of the executive director, or the person appointed to perform the functions, powers and duties of the executive director per rule K. A. R. 21-40-6.

(*b*) "Adjudication" means any order, decree, decision, determination or ruling affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

(*c*) "Attorney" means any licensed attorney currently admitted to practice before the Supreme Court of the State of Kansas or any attorney at law authorized to enter his appearance per rule K. A. R. 21-40-13.

(*d*) "Chairman" shall mean the chairman of the commission on civil rights duly designated by the governor pursuant to K. S. A. 44-1003, or, in the event of his absence, the acting chairman designated by the remaining members of the commission.

(*e*) "Commission" means the commission on civil rights created and amended by the Kansas act against discrimination, or as the context indicates, any member thereof.

(*f*) "Commissioner" shall mean one of the duly appointed members of the commission on civil rights.

(*g*) "Commission's attorney" shall mean an attorney designated to assist the commission to carry out the provisions of this act subject to approval by the attorney general.

(*h*) "Complainant" shall mean any person filing a complaint with the commission.

(*i*) "Complaint" shall mean a written statement made under oath and filed with the commission alleging any violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(*j*) "Discrimination" means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or any other differentiation or preference in the treatment of a person or persons on account of race, religion, color, sex, national origin or ancestry, and/or any denial of any right, privilege, or immunity secured or protected by the Constitution or laws of Kansas or the United States. Discrimination shall include but not be limited to any practice which produces a demonstrable racial or ethnic effect without a valid business motive.

(*k*) "Executive director" means the executive director employed by the commission.

(*l*) "Formal record" means all the filings and submittals in a matter or proceeding, any notice or agency order initiating the matter or proceeding, and if a hearing is held, the following: The designation of the presiding officer, transcript of hearing, all exhibits received in evidence, all exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the commission, and determinations made by the commission thereon, certifications to the commission, and

anything else upon which action of the presiding officer or the agency head may be based; but not including any proposed testimony or exhibits not offered or received in evidence.

(*m*) "Hearing commissioners" shall mean the commissioners designated by the chairman to conduct a pre-hearing, hearing, rehearing, reopen a hearing, or to proceed with any matter before the commission.

(*n*) "Interveners" means persons intervening or petitioning to intervene when admitted as a participant to a proceeding. Admission as an intervener shall not be construed as recognition by the commission that such intervener has a direct interest in the proceeding or might be aggrieved by any order of the commission in such proceeding.

(*o*) "Investigating commissioner" shall mean the commissioner duly designated by the commission to make investigation of a verified complaint filed with this commission, or to conduct any investigation initiated by the commission without the filing of a verified complaint.

(*p*) "Issue" means to prescribe or promulgate.

(*q*) "Matter or proceeding" means the elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon by the commission with respect to a particular subject by the commission, initiated by a filing or submittal or commission notice or order.

(*r*) "Party" means the complainant, the respondent, and any other person authorized by the commission to intervene in any proceeding.

(*s*) "Petitioners" means persons seeking relief, not otherwise designated in this section.

(*t*) "Pleading" means any application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

(*u*) "Presiding officer" means any member of the commission, or one or more hearing examiners appointed according to law and duly designated to preside at hearings or conferences, or other officers duly designated to conduct specified classes of proceedings.

(*v*) "Probable cause" means the presence of a reasonable ground for belief in the existence of the alleged facts of a violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(*w*) "Proposed report" means the written statement of the is-

sues, the facts, and the findings that a hearing examiner or other subordinate officer proposes the commission should make, with the reasons therefor, whether or not including a recommended order.

(*x*) "Respondent" shall mean any person against whom a complaitn has been filed alleging an unlawful employment practice or unlawful discriminatory practice within the meaning of this act.

(*y*) "Segrgeation" shall include but not be limited to any practice which results in any discriminatory grouping.

(*z*) "Submittal" means any document filed in nonadversary proceeding. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-2. Construction. These rules shall be liberally construed to accomplish the purposes of the act and the policies of the commission including the just, speedy, and inexpensive determination of the issues presented. (Authorized by K. S. A. 1972 Supp. 44-1001; effective Jan. 1, 1974.)

21-40-3. Rules of order. Meetings of the commission shall be governed by Roberts Rules of Order, with the exception that the chairman may make motions, second motions already made and vote upon any matters. (Authorized by K. S. A. 1972 Supp. 44-1004; effective Jan. 1, 1974.)

21-40-4. Cooperation with local agencies. The commission may cooperate with and utilize the services of local human relations commissions in fulfilling its responsibilities under the Kansas act against discrimination. The commission may enter into written agreements with local human relations commissions for such purposes. (Authorized by K. S. A. 1972 Supp. 44-1004; effective Jan. 1, 1974.)

21-40-5. Exercise of executive functions. The commission may use the executive director as its agent in exercising its executive functions, powers and duties. The commission shall annually compile a written evaluation of the executive director to be signed by the chairman or the designated acting chairman. The form used shall contain those items listed on Form DA-226-7 (Rev. 72) as authorized by the Department of Administration of the state of Kansas. (Authorized by K. S. A. 1972 Supp. 44-1004; effective Jan. 1, 1974.)

21-40-6. Death, disability or absence of executive director. Whenever, in the event of the death, disability or absence from the state of the executive director, it shall be necessary to appoint an acting executive director without delay, the chairman may make such appointment, subject to the ratification or rejection of the

commission at the next meeting. *Provided, however,* that rejection of such appointment shall have no effect on any of the actions of the acting executive director in the interim. In the event of any temporary absence of the executive director, the assistant director is authorized to exercise the functions, powers and duties of the executive director until the executive director returns. (Authorized by K. S. A. 1972 Supp. 44-1004; effective Jan. 1, 1974.)

21-40-7. Communications and filings generally. (*a*) All communications, submittals and pleadings should be addressed to the commission at the office of the commission unless otherwise specifically directed. All communications and filings should clearly designate the file number, docket number, or similar identifying symbols, if any, employed by the commission and should set forth a short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.

(*b*) In any proceeding when, upon inspection, the commission is of the opinion that a pleading or other matter tendered for filing does not comply with these rules or is otherwise insufficient, the commission may decline to accept the document for filing and may return it unfiled, or the commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(*c*) The commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any document filed with it.

(*d*) Except as may be otherwise ordered, the original copy of each pleading, submittal or other document shall be signed by the party in interest, or by his or its attorney, as required by subsection (*e*) of this section, and shall show the office and post office address of such party or attorney. All other copies filed shall be fully conformed thereto.

(*e*) Pleading, submittals and other documents filed shall be subscribed:

(*i*) by the person filing such documents, and severally if there is more than one person so filing; or

(*ii*) by an officer thereof if it is a corporation, trust, association, or other organized group; or

(*iii*) by an officer or employee thereof if it is another public agency or a political subdivision; or

(*iv*) by an attorney having authority with respect thereto.

(*f*) Documents filed by any corporation, trust, association, or

other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing such documents.

(*g*) The signature of the person subscribing any document filed constitutes a certificate by such individual that he had read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-8. Copies of pleadings. Upon filing any application, complaint, pleading, brief or other submittal, the party filing the same must file an original and nine copies thereof for the commission and furnish additional copies to the commission for each party who may be expected to participate in the proceeding. The commission may require the filing of such additional copies as it may need or desire. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-9. Commencement of a proceeding. A proceeding is commenced either by the filing of a complaint or other document or an order of the commission initiating an investigation or complaint on its own motion. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-10. Docket. The commission shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The docket shall be available for inspection and copying by the public during the office hours of the agency insofar as consistent with the proper discharge of the duties of the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-11. Service. (*a*) *Service by the commission.* Orders, notices and other documents originating with the commission shall be served by the office of the commission by mail, except when service by another method shall be specifically designated by the commission, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at the person's principal office or place of business. When service is not accomplished by mail, it may be

effected in person or as otherwise ordered by any one duly authorized by the commission.

(*b*) *Service by a participant.* All pleadings, submittals, briefs and other documents, filed in proceedings when filed or tendered to the commission for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant.

(*c*) *Effect of service upon an attorney.* When any participant has appeared by attorney service upon such attorney shall be deemed service upon the participant and separate service on the party may be omitted.

(*d*) *Date of service.* The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

(*e*) *Proof of service.* There shall accompany and be attached to the original of each pleading, submittal or other document filed with an agency when service is required to be made by the parties, a certificate of service. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1 1974.)

21-40-12. Time. (*a*) *Timely filing required.* Pleadings, submittals or other documents required or permitted to be filed under these rules or any other provision of law must be received for filing at the commission's office within the time limits, if any, for such filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

(*b*) *Computation of time.* Except as otherwise provided by law, in computing any period of time prescribed or allowed, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday, or a "legal holiday" as defined in K. S. A. 60-206, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(*c*) *Issuance of orders.* In computing any period of time involving the date of the issuance of an order the day of issuance of an order shall be the day the commission mails or delivers copies of the order to the parties, or if such delivery is not otherwise required by law, the day the commission makes such copies public. Orders will

not be made public prior to the mailing or delivery to the parties, except where, in the judgment of the commission, the public interest so requires. The day of issuance of an order may or may not be the day of its adoption by the commission. In any event, the office of the agency shall clearly indicate on each order the day of its issuance.

(*d*) *Extensions of time.*

(1) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may by the commission or the presiding officer, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended; and upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act. Requests for the extension of time in which to file briefs shall be filed at least five days before the time fixed for filing such briefs.

(2) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform any act required or allowed to be done at or within a specified time by these rules or any order, shall be by motion in writing, timely filed with the agency, stating the facts on which the application rests, except that during the course of a hearing in a proceeding, such requests may be made by oral motion in the hearing before the commission or the presiding officer. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-13. Representation. (*a*) *Appearance in person.* An individual may appear in his own behalf. A member of a partnership may represent the partnership, a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another public agency or of a political subdivision may represent the public agency or political subdivision in presenting any submittal to an agency subject to these rules.

(*b*) *Appearance by attorney.* A person may be represented in any proceeding by an attorney at law who is a resident of Kansas and regularly admitted to practice before the supreme court of Kansas or; a person may appear and be represented by any regularly admitted practicing attorney in the courts of record of another state of the United States, who has filed a verified application to the effect that he has associated and personally appearing with him, in the proceeding before the commission, an attorney

who is a resident of Kansas and duly qualified to practice law therein, as his local counsel. Said local counsel shall first enter his own appearance and then move for the admission of the non-resident attorney with whom he is associated.

(*c*) *Other representation prohibited at hearings.* A person shall not be represented at any hearing except:

(1) as stated in K. A. R. 21-40-13 (*a*) (relating to appearance in person) or K. A. R. 21-40-13 (*b*) (relating to appearance by attorney); or

(2) as otherwise permitted by the commission in a specific case.

(*d*) *Notice of appearance.*

(1) When an individual appears in his own behalf in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission or otherwise state on the record an address at which any notice or other written communication required to be served upon the person or furnished to the person may be sent.

(2) When an attorney appears before the commission in a representative capacity in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission a written notice of such appearance, which shall state the attorney's name, address and telephone number and the name and address of the person or persons on whose behalf the attorney appears. Any additional notice or other written communication required to be served on or furnished to a person may be sent to the attorney of record for such person at the stated address of the attorney.

(3) Any person appearing or practicing before the commission in a representative capacity may be required to file a power of attorney with the agency showing his authority to act in such capacity.

(*e*) *Suspension.* The commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found to have engaged in unethical or improper conduct before the commission. Practicing before the commission shall include, but shall not be limited to:

(1) Transacting any business with the agency.

(2) The preparation of any statement, opinion or other paper by an attorney, accountant, or other expert, filed with the commission in any pleading, submittal or other document with the consent of such attorney, accountant or other expert.

(*f*) *Contemptuous conduct.* Contemptuous conduct at any hearing shall be ground for exclusion from such hearing and for summary suspension without a hearing for the duration of the hearing.

(Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-14. Order issuance. All orders issued by the commission shall be reviewed by the chairman and signed by him or as otherwise designated by the chairman. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-15. Effective date of orders. Commission orders shall become effective when all service provisions of these rules are effected, unless otherwise ordered by the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-16. Commission decisions. The decisions of the commission or any panel of hearing commissioners shall be by majority vote. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-17. Intervention. (*a*) *Initiation of intervention.* At the discretion of the commission or presiding officer any person may by petition be allowed to intervene in person or by counsel, for such purposes and to such extent as the commission or presiding officer shall determine: *Provided,* Such person makes application to intervene at least ten (10) days before the hearing.

(*b*) *Form and contents of petitions.* Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding, so as fully and completely to advise the parties and the commission as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the proceeding, and citing by appropriate reference authority relied on.

(*c*) *Notice and action on petitions.*

(1) *Notice and service.* Petitions to intervene, when tendered for filing, shall show service thereof upon all participants to the proceeding in conformity with § 21-40-11 (*b*) of this Title (relating to service by a participant).

(2) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to such petitions or default thereof, the commission or presiding officer will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation.

(*d*) *Limitation of participation in hearings.* Where there are two or more interveners having substantially like interests and

positions, the commission or presiding officer may, in order to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of such interveners. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-18. Certification of documents and records. Certified copies. Copies of and extracts from public records may be certified by the commission. The chairman or such other person as may be designated by the commission is authorized to certify all documents or records of the commission. Persons requesting the commission to prepare such copies should clearly state the material to be copied and whether it shall be certified. Charges may be imposed for certification and for the preparation of copies. (Authorized by K. S. A. 1972 Supp. 44-1001; effective Jan. 1, 1974.)

21-40-19. Requests to inspect other records not considered public. Request to inspect records other than those now deemed to be of a public nature shall be addressed to the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-40-20. Availability of rules. The rules of the commission shall be available to the public at the office of the commission and upon request. (Authorized by K. S. A. 1972 Supp. 44-1001; effective Jan. 1, 1974.)

Article 21-41.—COMPLAINTS

21-41-1. Who may file. (*a*) *Filing and assistance.* Any person claiming to be a complainant may sign and file with the commission a verified complaint in writing. Assistance in drafting and filing complaints shall be available to complainants at all commission offices or otherwise through the commission and its staff.

(*b*) *On motion.* The Attorney General, or the commission on its own motion may file a complaint alleging any violation of any statute, rules or orders or other authority administered by the commission.

(*c*) *Employer.* Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of the law, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-2. Forms. The complaint shall be in writing either on a form obtained at any of the offices of the commission or on any paper suitable for a complaint, the original being signed and verified before a notary public or other person duly authorized by law to take acknowledgements. Notarial service shall be furnished without charge by the commission. Every professional member of the commission's staff shall be a statewide notary public and as much may notarize any complaint. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-3. Contents. A complaint shall contain the following: (*a*) The full name and address of the complainant.

(*b*) The full name and address of the respondent.

(*c*) The alleged unlawful employment practice or unlawful discriminatory practice and a statement of the nature thereof.

(*d*) The date or dates of the alleged unlawful employment practice or unlawful discriminatory practice, and if the alleged unlawful employment practice or unlawful discriminatory practice is of a continuing nature, the dates between which continuing acts of discrimination are alleged to have occurred.

(*e*) A statement as to any other action instituted in any other forum based on the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974)

21-41-4. Time of filing. The complaint must be filed within six (6) months after the date of the occurrence of the alleged unlawful employment practice or unlawful discriminatory practice. If the alleged unlawful employment practice or unlawful discriminatory practice is of a continuing nature, the date of the occurrence of said unlawful employment practice or unlawful discriminatory practice shall be deemed to be any date subsequent to the commencement of the unlawful employment practice or unlawful discriminatory practice up to and including the date upon which the unlawful employment practice or unlawful discriminatory practice shall have ceased. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-5. Manner of filing. The complaint may be filed by personal delivery to any commission employee or by mail to the commission's office. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-6. Amendment. The commission or the complainant shall have the power reasonably and fairly to amend the complaint as

a matter of right at any time before hearing thereon, and thereafter at the discretion of the presiding officer. The respondent and the complainant shall be notified of any such amendment in writing by the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-7. Withdrawal. A complaint may be withdrawn by the complainant at any time before a finding has been made. After a finding has been made, the complainant may request and the commission shall decide whether or not a complaint may be withdrawn. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-8. Dismissal before hearing. (*a*) *Dismissal.* If the commission finds either on the face of the complaint or after investigation, with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the complaint shall be dismissed as to such respondent.

(*b*) *Administrative convenience.* If the commission finds that the complainant's objections to a proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undesirable, the commission may, at any time prior to a hearing, dismiss the complaint on grounds of administrative convenience.

(*c*) *Service.* When a complaint is dismissed before hearing, the commission shall issue and cause to be served upon each party a copy of the order dismissing the complaint, and stating the grounds for such dismissal. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-9. Discontinuance. After the service of a notice of hearing on a party, a proceeding may be discontinued by the complainant only with the consent of the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-10. Criminal and civil proceedings. When a complainant institutes either criminal or civil proceedings on a matter pending before the commission, the commission may, in its own discretion, suspend or dismiss action on a complaint based on the same matter. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-41-11. Service of complaint. A copy of the complaint and any amendments shall be promptly served by the commission on the respondent. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Article 21-42.—INVESTIGATION

21-42-1. Investigation. Any commissioner or presiding officer may request the commission to initiate an investigation whenever any possible violation of any statute, rules, orders or other authority administered by the commission appears. Upon such requests the commission may initiate such investigation. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-2. Subpoenas. Any commissioner or the executive director may sign and issue a subpoena in the name of the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-3. Investigating commissioner. Whenever an investigation of a complaint is initiated, an investigating commissioner shall be assigned the case. Whenever an investigation is initiated without the filing of a formal complaint, an investigating commissioner may be assigned to the case. The investigating commissioner so assigned shall have the same powers of discovery in the name of the commission as are provided in these rules for any commissioner or presiding officer relative to any hearing or other proceeding, including the power of subpoena per K. A. R. 21-42-2 and 21-45-9; and discovery deposition in the same nature as provided by K. A. R. 21-45-10. If a formal complaint shall issue from the investigation, the same investigating commissioner shall be assigned to that complaint unless, in the judgment of the chairman, a new appointment should be made. The investigating commissioner may not participate in any subsequent proceedings which may eventually be held as a result of such investigation other than as a witness. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-4. Notice of investigation. Where an investigation is directed without the filing of a complaint, the commission will notify the person to be investigated of the nature and scope of such investigation. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-5. Preservation of records. (*a*) *Employment records.* When a complaint or notice of investigation has been served on an employer, labor organization or employment agency under the Kansas act against discrimination, the respondent shall preserve all personnel records relevant to the investigation until such complaint or investigation is finally adjudicated. The term "relevant to the investigation" shall include, but not be limited to, personnel, employment or membership records relating to the complainant and

to all other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant, and application forms or test papers completed by any unsuccessful applicant and by all other applicants or candidates for the same position or membership as that for which the complainant applied and was not accepted, and any records which are relevant to the scope of the investigation as defined in the notice or complaint.

(*b*) *Membership club records.* Where a complaint or notice of investigation has been served on a membership club under the Kansas act against discrimination, the respondent shall preserve all records relevant to the investigation until such complaint or investigation is finally adjudicated. The term "relevant to the investigation" shall include, but not be limited to, applications for membership on file at the time the complaint or notice or investigation is served and those received following service of the complaint or notice of investigation whether or not they have been accepted or rejected, membership lists, records of payment of initiation fees or regular dues, together with the minutes of meetings of the club conducted in conformity with the constitution or by-laws adopted by the membership.

(*c*) *Other records.* Any other books, papers, documents, or record of any form which are relevant to the scope of any investigation as defined in the notice or complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specifically orders otherwise. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-6. Amendment. The commission in its discretion may amend the notice of investigation. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-42-7. Probable cause notice. The parties to the proceeding shall be notified by the commission of the investigating commissioner's final determination relative to probable cause. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Article 21-43.—CONFERENCE AND CONCILIATION

21-43-1. Conference. If the investigating commissioner finds that probable cause exists for crediting the allegations of the complaint, the investigating commissioner or such other commissioner as the commission may designate, shall, assisted by the executive director and the commission's staff, immediately endeavor to eliminate any unlawful practice or other matter in the complaint by

conference, conciliation and persuasion. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-43-2. Time limitation for conciliations. Failure to arrive at a satisfactory adjustment within forty-five (45) days after respondent is notified in writing of a finding of probable cause may constitute sufficient reason for the commission to judge efforts at conference and conciliation to be a failure. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-43-3. Successful conciliation. (*a*) *Preparation.* If the investigating commissioner, or such other commissioner as the commission may designate, assisted by the executive director and the commission's staff, shall succeed in endeavors under conference and conciliation, then a proposed conciliation agreement shall be prepared.

(*b*) *Agreement.* The commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within five (5) days after its service upon him, the commission may formally enter into the proposed conciliation agreement by issuing an order embodying such conciliation agreement. The commission shall serve a copy of such order upon all parties to the proceeding.

(*c*) *Terms.* The terms of such conciliation agreement may include any provisions and remedies, for retroactive, present or future effect, including all remedies which may be ordered by the commission per K. A. R. 21-45-21, and including a provision for the entry in court of a consent decree embodying terms of the conciliation agreement. When the commission accepts a conciliation agreement containing a provision for the entry in court of a consent decree, the commission's attorney, on behalf of and in the name of the commission, may commence a proceeding in the court to obtain an order for its enforcement. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-43-4. Consideration of complainant's objections. If the complainant objects to the proposed conciliation agreement, complainant shall, within five (5) days of the agreement's service upon complainant, serve a specification of the objections upon the commission. Unless such objections are met or withdrawn within five (5) days after service thereof, the commission shall thereafter notice the complaint for hearing, except in cases where the complaint may be dismissed on the grounds of administrative convenience. However, the commission, where it finds the terms of a conciliation

agreement to be in the public interest, may execute such agreement if the respondent is still willing to execute it, and may limit the hearing to the objections of the complainant, unless the respondent demands a hearing on the merits of all of the charges by serving an answer including such a demand. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-43-5. Settlements. At the hearing, the commission's attorney, with the consent of the complainant, may stipulate with the respondent for settlement of the case and the commission may issue an order on such stipulation. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-43-6. Non-disclosure of facts. The commission shall not disclose what has transpired in the course of its endeavors at conciliation and persuasion, per K. S. A. 44-1005. However, when executed, the final terms of a conciliation agreement may be disclosed. No officer, agent or employee of the commission shall make public with respect to a particular person without his consent information from reports obtained by the commission except as necessary to the conduct of further commission proceedings. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Article 21-44.—COMPLIANCE

21-44-1. Compliance review. (*a*) *Date.* Not later than six (6) months from the date of a conciliation agreement or an order issued under Article 45 of these rules, or at any other time in its discretion, including contract compliance review per K. S. A. 44-1032, the commission shall investigate whether the respondent is complying with the terms of such agreement, contract or order.

(*b*) *Non-compliance.* Upon a finding of non-compliance, the commission shall take appropriate action to assure compliance. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-44-2. Reports.. (*a*) *Filing.* When any person subject to the jurisdiction of the commission is required to do or perform any act by the commission order, there shall be filed with the office of the commission within thirty (30) days following the date when such requirement became effective, a notice, stating that such requirement has been met or complied with, unless the commission directs otherwise.

(*b*) *EEO forms.* Every employer, labor organization and joint labor-management apprenticeship committee subject to the Kansas act against discrimination and also subject to the jurisdiction of the U. S. equal employment opportunity commission shall file with that agency the appropriate forms as required in accordance with that agency's instructions and regulations. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1 ,1974.)

21-44-3. Posting of law and information. "A conspicuous place or places" for the purpose of K. S. A. 44-1012 shall be any easily accessible and well lighted place or places where the notices may readily be seen regularly by employes, applicants for employment, members of labor organizations, applicants for membership in labor organizations, or persons using or attempting to use places of public accommodations or the services of an employment agency, or any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-44-4. Records. No notation identifying the race, religion, color, sex, national origin or ancestry of an individual shall be made or maintained on application forms or other records except as provided otherwise in these rules. Violations of this rule shall be deemed evidence of discrimination unless a person may show it is acting in conformity with an explicit mandate of a local, state or federal civil rights agency. The commission recommends the maintenance of a permanent record as to the racial, sexual, religious or ethnic identity of an individual for the purpose of complying with various reporting requirements only where the person maintains such records separately from the individual's basic personnel file or other similar records available to those responsible for decisions (*e. g.*, as a part of an automatic data processing system in the payroll department). (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-44-5. Membership club references. Membership clubs which are covered by the Kansas act against discrimination may not require a recommendation by a present member or members as a prerequisite for admission to membership if the present membership does not bear a reasonable relationship to the ethnic and racial pattern of the general population of the area from which such clubs draw members; nor, in such cirmumstances, may they give preference to applicants recommended by present members by reason of such recommendation. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Article 21-45.—PROCEEDINGS

21-45-1. Notice of hearing. The notice of hearing shall inform the respondent of the time and place of the hearing and that respondent may file written answer to the complaint. The notice of hearing and verified copy of the complaint, as the same may have been amended, shall be served by certified mail, return receipt requested, or by personal service on all parties. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-2. Answer. (*a*) *Time of filing.* The respondent against whom a verified complaint, as the same may have been amended, is filed and on whom a notice of hearing and a copy of such complaint have been served, may file a written verified answer in person or through an attorney-at-law within ten (10) days from the service of such complaint and notice of hearing.

(*b*) *Form of answer.* The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense. Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, shall be deemed admitted. The answer shall contain the post-office address of the respondent, and if he is represented by an atorney, the identification of said attorney as otherwise provided by the rules.

(*c*) *Amendment of answer.* The answer or any part thereof may be amended as a matter of right at any time before the first hearing and thereafter in the discretion of the presiding officer on application duly made therefor.

(*d*) *Amendment of answer upon amendment of complaint.* In any case where a complaint has been amended, the respondent shall have an opportunity to amend his answer within such period as may be fixed by the presiding officer, and the hearing shall be postponed to a date at least fifteen (15) days after the filing of such amended complaint.

(*e*) *Failure to file answer.* The presiding officer may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the notice of hearing and may make its findings of fact and enter its order upon the testimony taken at the hearing. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-3. Consolidation. By order of the commission, proceedings involving common questions of law or fact may be joined for hearing of any or all matters in issue and such proceedings may be consolidated; and any commissioner or presiding officer may make such orders concerning the conduct of the proceedings as may avoid unnecessary costs or delay. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-4. Waiver of hearing. In any proceeding if the participants waive hearing the commission may forthwith dispose of the matter upon the basis of the pleadings or submittals and the studies of the staff. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-5. Hearing calendar. The commission will maintain a hearing calendar of all proceedings set for hearing. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-6. Placement on calendar. In the absence of cause requiring otherwise, and as time, the nature of the proceedings, and the proper execution of the functions of the commission permit, matters required to be determined upon the record after hearing or opportunity for hearing will be placed upon the hearing calendar. Proceedings pending upon this calendar will be their order of assignment, so far as practicable, be heard at the times and places fixed by the commission or presiding officer, giving due regard to the convenience and necessity of the parties or their attorneys. The commission in its discretion with or without motion, for cause may at any time with due notice to the participants advance or postpone any proceeding on the hearing calendar. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-7. Pre-hearing conferences. (*a*) *Generally. Conferences to adjust, settle or expedite proceedings.* In order to provide opportunity for submission and consideration of facts, arguments, offers of settlement, or any of the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings before the presiding officer as time, the nature of the proceeding, and the public interest may permit.

(*b*) *Conferences to expedite hearing.* At any pre-hearing or other conferences which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement or proposals of adjustment, the possibility of the following:

(1) The simplification of the issues.

(2) The exchange and acceptance of service of exhibits proposed to be offered into evidence.

(3) The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(4) The limitation of the number of witnesses.

(5) The discovery or production of evidence.

(6) Such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(*c*) *Initiation of conferences.* (1) The commission or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the parties to the proceeding, the staff of the commission and staff counsel to appear thereat to consider any or all of the matters enumerated in K. A. R. 21-45-7 (*b*) (relating to conferences to expedite hearings). Due notice of the time and place of such conference shall be given to all parties to the proceeding, the staff of the commission and staff counsel.

(2) All parties will be expected to come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a participant to attend such conference, after being served with due notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

(*d*) *Authority of presiding officer at conference.* The presiding officer at any conference may dispose of by ruling, irrespective of the consent of the participants, any procedural matters which he is authorized to rule upon during the course of the proceeding, and which it appears may appropriately and usefully be disposed of at that stage. In addition, where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer at his discretion and with due regard for the convenience and necessity of the parties, the staff of the commission and staff counsel, may direct such advance distribution

by a prescribed date. The rulings of the presiding officer made at such conference shall control the subsequent course of the hearing, unless modified for good cause shown.

(*e*) *Offers of settlement.* Nothing contained in these rules shall be construed as precluding any participant in a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the commission (or to staff counsel for transmittal to the commission) or from requesting conferences for such purpose.

(*f*) *Refusal to make admissions or stipulate.* If a party attending a conference convened pursuant to these rules refused to admit or stipulate the genuineness of any documents or the truth of any matters of fact and if the participant requesting the admissions or stipulations thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the commission or presiding officer for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the commission or presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of not substantial importance, the order shall be made. An appeal may be taken to the commission from any such order made by a presiding officer. If a party refuses to comply with such order after it becomes final, the commission or presiding officer may strike all or any part of such pleadings of such party or limit or deny further participation by such party. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-8. Hearings. (*a*) *Who shall conduct.* Hearings and rehearings shall be conducted by the hearing commissioners designated by the chairman, one of whom shall be designated as presiding officer by the chairman; or, at the discretion of the commission, hearings and rehearings may be conducted by a hearing examiner appointed per K. A. R. 21-45-17 who shall be the presiding officer vested with all the powers and duties of a presiding officer according to these rules.

(*b*) *Place.* Hearings and rehearings shall be held in the county where respondent is doing business and where the acts complained of occurred at a place designated by the chairman of the commission.

(*c*) *Appearance.* The presiding officer before whom the hearing is held shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

(*d*) *Procedure before hearing commissioners.* (1) The hearing

commissioner(s) shall have full authority to direct the control of the procedure of the hearings and rehearings, by the presiding officer, to admit or exclude testimony or other evidence, and to rule upon all motions and objections.

(2) All rulings and determinations of the hearing commissioner(s) shall be by majority rule.

(3) The hearing commissioners may call and examine witnesses, direct the production of papers or other documents and introduce documentary or other evidence.

(4) Whenever the hearing commissioner(s) cannot arrive at a majority decision for any reason, the chairman may appoint one or more new hearing commissioners who shall review the transcript of proceedings and participate in the proceedings with the same power and authority as if originally appointed as a hearing commissioner.

(*e*) *Order of procedure.* (1) In hearings, the complainant, or other party having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding officer. In proceedings which have been consolidated for hearings, the presiding officer may direct who shall open and close.

(2) Intervenors shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of any original party, the presiding officer shall designate at what stage such intervenor shall be heard.

(3) In proceedings where the evidence is peculiarly within the knowledge or control of another party or participant, the order of presentation set forth in subsections (1) and (2) of this section may be varied by the presiding officer.

(*f*) *Presentation by the parties.* (1) Parties and staff counsel shall have the right of presentation of evidence, cross-examination, objection and motion. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(2) When the objections to the admission or exclusion of evidence before the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and shall not be taken to rulings thereon.

(*g*) *Limiting number of witnesses.* The presiding officer may limit appropriately the number of witnesses who may be heard upon any issue.

(*h*) *Additional evidence.* At any stage of the hearing the presiding officer may call for further evidence upon any issue, and require

such evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or at the adjournments thereof. At the hearing, the presiding officer may, if deemed advisable, authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

(*i*) *Oral examination.* Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(*j*) *Fees of witnesses.* Witnesses subpoenaed by the commission shall be paid the same fees and mileage as are paid for like services in the district court. Witnesses subpoenaed at the instance of participants shall be paid the same fees by the participant at whose instance the witnesses are subpoenaed; and the commission before issuing any subpoena as provided in K. A. R. 21-45-9 (relating to subpoenas), may require a deposit of an amount adequate to cover the fees and mileage involved.

(*k*) *Public hearings and rehearings.* Hearings and rehearings shall be made public.

(*l*) *Rights of parties.* All parties to a hearing or rehearing may call, examine and cross-examine witnesses and introduce papers, documents, or other evidence into the record of the proceedings, subject to the ruling of the presiding officer.

(*m*) Duties of the hearing commissioners or presiding officer include but are not limited to the following:

(1) Administer the oath.

(2) Rule on proof.

(3) Regulate the hearing.

(4) Exclude people from the hearing.

(5) Hold conferences for simplification of issues.

(6) Dispose of procedural requests.

(7) Authorize and set times for filing of briefs.

(8) Grant continuances.

(9) Take any other action consistent with the purpose of the law administered by the commission and consistent with these rules.

(*n*) *Stipulations.* Written stipulations may be introduced in evidence, if signed by the persons sought to be bound thereby; or by their attorneys. Oral stipulations may be made on the record at open hearings or rehearings.

(*o*) *Oral arguments and briefs.* The presiding officer shall permit the parties to submit oral arguments before them and to file briefs within such time limits as the presiding officer may determine consistent with K. A. R. 21-45-15 regarding briefs.

(*p*) *Waiver of objections.* Any objection not duly urged before the presiding officer shall be deemed waived unless the failure or neglect to urge such objection shall be excused for cause by the presiding officer.

(*q*) *Continuations, adjournments and substitutions.* The presiding officer may postpone, consistent with commission directives regarding the setting of the matter, a scheduled hearing or continue a hearing from day to day or adjourn it to a later day or to a different place by announcement thereof at the hearing or by appropriate notice to all parties. The commission may, at any time prior to the completion of a hearing, substitute one hearing commissioner or presiding officer for another. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-9. Subpoenas. (*a*) *Issuance.* Subpoenas for the attendance of witnesses or for the production of evidence, unless directed by the commission upon its own motion, will issue only upon application in writing to the commission or the presiding officer, except that during sessions of a hearing in a proceeding, such application may be made orally on the record before the presiding officer, who is hereby given authority to issue subpoenas. Such written applications shall specify as nearly as may be the general scope of the testimony or evidence sought, including as to evidence, specification as nearly as may be, of the documents desired. Any commissioner may issue subpoenas.

(*b*) *Service and return.* If service of subpoena is made by a sheriff or like officer or his deputy, such service shall be evidenced by his return thereof. If made by another person, such person shall make affidavit thereof, describing the manner in which service was made, and shall return such affidavit. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned forthwith to the office of the commission or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(*c*) *Fees of witnesses.* Witnesses who are subpoenaed may be paid fees as provided by K. A. R. 21-45-8 (*j*) or as allowed by the State department of administration. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-10. Depositions. (*a*) *Generally.* The testimony of any

witness may be taken by deposition, upon application by a participant in a proceeding pending before the commission any time before the hearing is closed, upon approval by the commission or the presiding officer.

(*b*) *Notice and application.* Unless notice is waived, no deposition shall be taken except after at least ten (10) days' notice when a deposition is to be taken elsewhere. Such notice shall be given in writing by the participant proposing to take such deposition to the other participants and to the commission. In such notice and application to take evidence by deposition, the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason why such deposition should be taken. The other participants may, within the time stated in this section, make any appropriate response to such notice and application.

(*c*) *Authorization of taking deposition.* If an application for the taking of a deposition so warrants, the commission or presiding officer will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the participants an authorization naming the witness whose deposition is to be taken, and the time, place and notarial officer before whom the witness is to testify, but such time, place and notarial officer so specified may or may not be the same as those named in the said notice and application.

(*d*) *Officer before whom deposition is taken.* Depositions may be taken before any commissioner, a presiding officer or other authorized representative of the commission, any notary public or any other person authorized to administer oaths not being counsel or attorney for any of the participants, or interested in the proceeding or investigation, according to such designation as may be made in the authorization.

(*e*) *Oath and reduction to writing.* Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which he shall testify, before any questions are put or testimony given. The testimony shall be reduced to writing by the notarial officer, or under his direction, after which the deposition shall be subscribed by the witness, unless waived, and certified in the usual form by the notarial officer.

(*f*) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the deponent may be examined regarding any matter which may be relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. Participants shall have the right of cross-examination, objection and exception. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition, but he shall not have the power to decide on the competency, materiality or relevancy of evidence. Objections to questions or evidence not taken before the notarial officer shall be deemed waived.

(*g*) *Status of deposition as part of record.* No part of a deposition shall constitute a part of the record in the proceeding, unless received in evidence by the commission presiding officer. Objection may be made at the hearing in the proceeding to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

(*h*) *Fees of officers and deponents.* Deponents whose depositions are taken and the notarial officers taking such depositions shall be entitled to the same fees as are paid for like services in the district courts, which fees shal be paid by the participants at whose instance the depositions are taken.

(*i*) *Depositions upon written questions.* Upon written application requesting deposition by written questions, any commissioner or presiding officer may for good cause permit such a deposition according to such terms and scope as directed by said commissioner or presiding officer. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-11. Interrogatories. Upon written application, any commissioner or presiding officer may, for good cause, permit interrogatories as generally identified in K. S. A. 60-233, but limited to the specific terms and scope as may be directed by said commissioner or presiding officer. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-12. Motions. (*a*) *Scope and contents.* After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired, except as

may be otherwise expressly provided in these rules. Other motions may be made as provided for elsewhere in these rules. Motions shall set forth the ruling or relief sought, and state the grounds therefor and the authority relied upon.

(*b*) *Presentation.* Motions may be made in writing at any time and motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately. Oral motions shall be included in the transcript.

(*c*) *Objections.* Any participant shall have ten (10) days within which to answer or object to any motion unless the period of time is otherwise fixed by the commission or the presiding officer.

(*d*) *Action on motions.* (1) The presiding officer is authorized to rule upon any motion not formally acted upon by the commissioners except that no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon by a presiding officer except as a part of his proposed report submitted after the conclusion of the hearing. A presiding officer may refer any motion to the hearing commissioner(s) or commission for ultimate determination. The hearing commissioner(s) or commission will rule upon all other motions and upon such motions as presiding officers may certify to the commission for disposition.

(2) With respect to any motion filed with the commission after a hearing has commenced, or made to a presiding officer after a hearing has commenced and referred to the commission, unless the commission acts within thirty (30) days after such filing or referral, whichever is later, the motion shall be deemed to have been denied. The presiding officer, either by an announcement on the record where the hearing is in session or by written notice if the hearing is in recess, shall notify the parties to the proceeding of the date on which a motion is referred to the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-13. Evidence. (*a*) *Form and admissibility.* In any proceeding before the commission or a presiding officer relevant and material evidence shall be admissible, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of any probative value.

(*b*) *Reception and ruling.* The presiding officer shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

The production of further evidence upon any issue may be ordered.

(*c*) *Documents on file with the commission.* In case any matter contained in a report or other document on file with the agency is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(*d*) *Public documents.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document item by specifying the document or relevant part thereof without regard to the requirements of K. A. R. 21-45-13 (*g*).

(*e*) *Written testimony.* (1) Direct testimony of any witness may be offered as an exhibit, or as prepared written testimony to be copied into the transcript. Cross-examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated if, not less than twenty (20) days prior to such hearing, service thereof is made upon each participant of record, unless the presiding officer for good cause shall otherwise direct.

(2) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the commission or the presiding officer may direct that testimony to be given upon direct examination shall be reduced to exhibit form or to the form of prepared written testimony and be served and offered in the manner provided in subsection (1) of this section. A reasonable period of time shall be allowed for the preparation of such written testimony.

(3) All participants offering prepared written testimony whether in the form of an exhibit, or to be copied into the transcript, shall insert line numbers on each page, in the left-hand margin, unless otherwise directed by the commission or presiding officer.

(*f*) *Records in other proceedings.* When any portion of the record in any other proceeding before the commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of such record shall be presented in the

form of an exhibit, together with additional copies as provided in K. A. R. 21-45-13 (*g*) (relating to copies to parties and commission), unless:

(1) The participant offering such record agrees to supply, within a period of time specified by the commission or the presiding officer, such copies at his own expense, if and when so required; and

(2) the portion is specified with particularity in such manner as to be readily identified, and upon motion is admitted in evidence by reference to the records of the other proceedings.

(*g*) *Copies to parties and the commission.* Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, unless otherwise directed by the commission or the presiding officer, copies shall be furnished to the presiding officer and to the participants present at the hearing. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-14. Official notice of facts. Official notice may be taken by the commission or the presiding officer of such matters as might be judicially noticed by the district courts, or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute, or any matters as to which the commission by reason of its functions is an expert. Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-15. Briefs. (*a*) *Proceedings in which briefs are to be filed.* At the close of the taking of testimony in each proceeding where briefs are allowed, the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved; and he shall fix the order in which such briefs shall be filed. The first or initial brief shall be filed by the participant or participants upon whom rests the burden of proof, except that the presiding officer, when in his judgment the circumstances or exigencies require, may direct that briefs shall be filed simultaneously. In no proceeding, whether briefs are to be filed simultaneously or otherwise, shall any participant upon whom rests the burden of proof be denied the right to file a reply brief.

(*b*) *Content.* Briefs shall contain: (1) A concise statement of the case.

(2) An abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.

(3) Proposed findings and conclusions and, if desired, a proposed form of order or regulation, together with the reasons and authorities therefor, separately stated.

(*c*) *Form.* Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analyses of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than ten (10) pages shall contain on its front leaves a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be as concise as possible.

(*d*) *Filing and service.* Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing, except by special permission of the commission or the presiding officer. Except where filing of a different number is permitted or directed by the commission or presiding officer the same number of copies of each brief as is required for other pleadings shall be furnished for the use of the commission. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-16. Transcript. (*a*) *Recording of proceedings.* Hearings shall be stenographically reported by the official reporter of the commission unless reporting is otherwise directed by the commission, and a transcript of such report shall be a part of the record and the sole official transcript of the proceeding. Such transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed on the record by the commission or the presiding officer.

(*b*) *Transcript corrections.* Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, except as provided in this section. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the commission or the presiding officer, at any time during the hearing or after the close of evidence, as may be permitted by the commission or the presiding officer before the filing of his proposed report, but not less than ten (10) days in advance of the time fixed for filing final briefs.

The commission or the presiding officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

(*c*) *Copies.* The commission will cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies may obtain them from the official reporter upon payment of the reporter's fees. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-17. Presiding officers. (*a*) *Designation of presiding officers.* Either the chairman or, when duly designated for that purpose, one of the hearing commissioners, or a hearing examiner, or other duly appointed representative may preside at a hearing or otherwise, as the presiding officer.

(*b*) *Hearing examiner qualification.* Qualifications for the hearing examiner shall be that the person is a qualified attorney to practice law in the state of Kansas, that the person has practiced law for a minimum of three (3) years and that the person be familiar with the rules of the commission.

(*c*) *Presiding officer disqualification.* A presiding officer may withdraw from a proceeding when the presiding officer deems itself disqualified, or the presiding officer may be withdrawn by the chairman for good cause after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the chairman or other hearing commissioner to whom the chairman has delegated the matter.

(*d*) *Authority of presiding officers.* Presiding officers duly designated by the commission to preside at hearings shall have the authority, within the powers and subject to the regulations of the commission, as follows:

(1) To regulate and control the course of hearings, subject to the approval of the commission, and the recessing, reconvening, and the adjournment thereof.

(2) To administer oaths and affirmations.

(3) To issue subpoenas.

(4) To rule upon offers of proof and receive evidence.

(5) To take or cause depositions to be taken.

(6) To allow interrogatories.

(7) To hold appropriate conferences before or during hearings.

(8) To dispose of procedural matters but not, before their proposed report, if any, to dispose of motions made during hearings to

dismiss proceedings or other motions which involve final determination of proceedings.

(9) Within their discretion, or upon direction of the commission, to certify any question to the commission for consideration and disposition.

(10) To submit their proposed reports in accordance with K. A. R. 21-45-18 (relating to proceedings in which proposed reports are prepared).

(11) Hold conferences for the settlement or simplification of the issues or for the obtaining of mutually satisfactory stipulations as to facts or proof, by consent of the parties, as authorized by established procedure.

(12) Grant adjournments at the request of parties or representatives or on their own motion.

(13) Interrogate witnesses and parties as the case requires.

(14) Direct parties to appear at hearings.

(15) Consider and evaluate the facts and evidence on the record, as well as arguments and contentions made.

(16) Determine credibility and the weight of evidence in making findings of fact and conclusions of law or opinion and their reasons.

(17) Make a complete record of the proceeding and to include therein all relevant and material matters, including exhibits, necessary for a review on appeal.

(18) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the agency functions and with the regulations and policies of the agency.

(*e*) *Restrictions on duties and activities.* Save to the extent required for the disposition of ex parte matters as authorized by law and by the regulations of the agency, no presiding officer shall, in any proceeding which the commission has directed be conducted pursuant to this subsection, consult any person or party on any fact in issue unless upon notice and opportunity for all participants to participate.

(*f*) *Appeals to commission from rulings.* (1) *During hearing or conference.* Rulings of presiding officers may not be appealed from during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instance the matter shall be referred forthwith by the presiding officer to the commission for determination.

(2) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-18. Proposed reports. (*a*) *Generally.* At the close of the evidence, the presiding officer shall allow briefs and hold such oral argument as he deems necessary, review the record in light of the applicable law, and prepare, certify and file with the office of the agency:

(1) A proposed report.

(2) A copy of the record of the hearing.

(3) The briefs, if any, filed in the proceeding.

(*b*) *Unavailability of presiding officer.* If a presiding officer becomes unavailable, the commission will either designate another presiding officer to prepare a proposed report or will cause the record to be certified to the commission for decision, as may be deemed appropriate, giving notice to the parties.

(*c*) *Proposals by the parties.* There may be presented by the parties, as directed by the presiding officer, proposed findings and conclusions and, if desired, the reasons therefor, and such proposed forms of order or regulation as may be deemed requisite in view of the facts, the law and the public interest

(*d*) *Contents of proposed reports.* All proposed reports by presiding officers shall include a statement of:

(1) Findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and

(2) the appropritae regulation, order, sanction, relief, or denial thereof.

(*e*) *Proposed report a part of the record.* All proposed reports shall become a part of the formal record.

(*f*) *Service of proposed reports.* All proposed reports shall be filed with the office of the commission, which shall serve copies thereof upon all parties and staff counsel of record. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-19. Exceptions to proposed reports. (*a*) *Procedure to except to proposed report.* Any participant desiring to appeal to the

commission shall, within ten (10) days after the service of a copy of the proposed report or such other time as may be fixed by the commission file exceptions to the proposed report or part thereof in a brief (designated "briet on exceptions"). "Briefs opposing exceptions" may be filed in response to briefs on exceptions within ten (10) days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the commission. No further response will be entertained unless the commission, with or without motion, so orders.

(*b*) *Briefs on exceptions.* (1) Briefs on exceptions shall contain: (*i*) A short statement of the case, (*ii*) a summary of the basic position of the party filing, (*iii*) the grounds upon which the exceptions rest, and (*iv*) the argument in support with the appropriate references to the record and legal authorities.

(2) There may also be included specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions.

(3) Exceptions to the form of order or regulation shall specify the portions thereof to which exception is taken, and may set forth a form of order or regulation suggested in lieu of that served.

(*c*) *Briefs opposing exceptions.* Briefs opposing exceptions shall generally follow the same style prescribed for briefs on exceptions, but may omit a statement of the case if it was correctly stated in a brief on exception.

(*d*) *Length.* Briefs on exceptions and briefs opposing exceptions shall be self contained and limited to thirty (30) pages in length, provided that for good cause the limitation on length may be altered or waived for either class of briefs upon application to and order of the commisison at least five (5) days before the time fixed for filing of the respective briefs

(*e*) *Effect of failure to except.* The commission may refuse to consider exceptions to a ruling admitting or excluding evidence unless there was an objection at the time the ruling was made or within any deferred time provided by the presiding officer.

(*f*) *Oral argument on exceptions.* Any party or staff counsel filing a brief on exceptions or brief opposing exceptions may by motion request an opportunity to present oral argument to the commission on the proposed report. Such motion must be filed within the time limited for the filing of briefs opposing exceptions. If oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the briefs. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004: effective Jan. 1 1974.)

21-45-20. Briefs and oral argument in absence of proposed report. In proceedings in which the proposed report is not required, any participant filing a brief may by motion request an opportunity to present oral argument to the commission. Such motion shall be filed within the time limited for the filing of reply briefs. If oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the briefs. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-21. Content of orders. (*a*) *An unlawful practice.* If a proposed or final report finds that a respondent has engaged in any unlawful practice, the proposed or final order based on such report may include, where appropriate, but is not limited to the following:

(1) Cease and desist: Directing the respondent to cease and desist from such unlawful practice; and

(2) Affirmative action: Requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, maintenance and operation of an affirmative action file per K. A. R. 21-30-18, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship program, on-the-job training program or other occupational training or retraining program, and the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as will effectuate the purpose of the law; and

(3) Compensation damages: Awarding of compensatory damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

(4) Punitive damages: Awarding of punitive damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

(5) Compliance report: Including a requirement for report of the manner of compliance.

(*b*) *No violation.* If, a proposed or final report finds the respondent has not engaged in any unlawful practice, the report shall state the finding of the fact and shall issue an order based on such findings dismissing the complaint as to such respondent. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-22. Final report and order. (*a*) *Generally.* All reports and orders of the commission shall be final orders (subject only to application for rehearing), except proposed regulations that may be issued in rulemaking. Final orders shall include determination

by the commission upon appeal of proposed reports or upon review initiated by the commission within ten (10) days next following the expiration of the time for filing exceptions under such section, or such other time as the commission may fix in specific cases.

(*b*) *No rehearing.* No application for rehearing will be entertained by the commission until an adjudication is issued and becomes a final order under the provisions of this section.

(*c*) *Content.* An order of the commission issued after a hearing shall set forth the findings and conclusions of the commission and an opinion containing the reasons for said decision.

(*d*) *Copies.* Copies of orders shall be delivered in all cases by the commission in accordance with the provisions of K. S. A. 44-1005, and also to every other party as otherwise required by these rules.

(*e*) *Notice.* Copies of orders shall be accompanied by a notice of the statutory right to apply for a rehearing.

(*f*) *Change.* When the commission upholds, abrogates, changes, or modifies an original order after a rehearing, it shall so notify in writing the party making application for the rehearing and all other persons furnished with a copy of the original order in accordance with the provisions of subsection (*d*) of this rule, K. A. R. 21-45-22 (*d*). Such notice shall be accompanied by a notice of the statutory right to judicial review.

(*g*) *Filing.* Filing of orders rendered after a hearing, as well as all abrogations, changes or modifications thereof as the result of a rehearing, shall be at the office of the commission and shall be open to public inspection during regular office hours of the commission.

(*h*) *Final adjudication.* A complaint shall be deemed finally adjudicated:

(1) When a respondent is notified in writing by the commission that it is closing a case for whatever reason; or

(2) When an order issued by the commission after a hearing or rehearing becomes final. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-23. Record of the proceedings. The written record of the proceedings before the commission for appeal or other public purposes shall include the formal record. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-24. Rehearing. (*a*) *Form, filing and service.* An application for rehearing shall be filed with the commission at its office in Topeka within ten (10) days after the issuance of any adjudication or other final order by the agency. Such application shall be made by petition, stating specifically the grounds relied on. A copy of

such application shall be served on all the other persons receiving a copy of the original order in conformity with the service provisions of these rules, by the party making such application.

(*b*) *Content of application for rehearing.* Every application for rehearing shall contain, other than the information required by K. S. A. 44-1010, the following:

(1) The docket number of the case for which such application is being made.

(2) The name of the party making such application, together with such other identifying information as is otherwise required for any appearance or submittal by these rules.

(3) The name and address of each person served with a copy of such application in conformity with the service provisions of these rules.

(4) Such petitions shall state concisely and specifically alleged errors in the adjudication or other order of the commission. If an adjudication or other order of the agency is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(*c*) *Matter of filing and serving applications for rehearing.* Applications for rehearing shall be filed and served by personal delivery or by certified mail, return receipt requested.

(*d*) *Date of application for rehearing.* The date an application for rehearing is filed shall be the date it is delivered to the commission's office in Topeka, whether by personal delivery or by mail.

(*e*) *Granting an application for rehearing.* When the commission grants an application for rehearing, it shall so notify the parties in writing.

(*f*) *Date of granting an application for rehearing.* The date an application for rehearing is granted shall be the date on which the commission makes such decision.

(*g*) *Other procedural rules.* The rehearing shall follow the same procedural rules as a hearing, except to the extent otherwise directed by the commission or a presiding officer.

(*h*) *Effect of failure to allege specific error.* Failure to request a rehearing on specific allegation of error and provide the reasons therefor shall constitute a waiver of all objection to any matters not specifically alleged as error. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-45-25. Reopening of the record. (*a*) *Petition to reopen.* At any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die,* any participant with notice to all participants in the proceeding may file with the presiding officer, if before issuance by the presiding officer of a proposed report, otherwise with the commission a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(*b*) *Responses.* Within ten (10) days following the service of such petition, any other participant may file with the presiding officer or the commission, the participant's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

(*c*) *Action on petition.* As soon as practicable after the filing of responses to such petitions or default thereof, the presiding officer or commission will grant or deny such petition.

(*d*) *Reopening by presiding officer.* At any time prior to the filing of the proposed report a presiding officer, after notice to the participants, may reopen the proceeding for the reception of further evidence on the presiding officer's own motion, if the presiding officer has reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

(*e*) *Reopening by the commission.* At any time the commission, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the commission has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires the reopening of such proceeding. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Articles 21-46.—MISCELLANEOUS SUBSTANTIVE PROVISIONS

21-46-1. Class B private clubs. All clubs holding licenses from the alcoholic beverage control commission as class B clubs are deemed places of public accommodations and subject to the provision of the Kansas act against discrimination. Nothing in the present paragraph shall be construed as grounds for an automatic exemption of any club holding a license from the alcoholic beverage control commission as a class A club from the provisions of the

Kansas act against discrimination. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-46-2. Nonprofit fraternal or social associations or corporations. An association or corporation shall be deemed exempt from coverage by the Kansas act against discrimination as a nonprofit fraternal or social association or corporation only if it meets all the following requirements:

(*a*) *Requirements.* (1) It is organized in good faith for social or fraternal purposes;

(2) Membership entails the payment of bona fide initiation fees or regular dues;

(3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership;

(4) There is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates;

(5) It is not operated, directly or indirectly, for purposes of profit for any individual or groups of individuals other than the membership as a whole.

(*b*) *Investigations.* The commission shall conduct an investigation of any proposed exemption from the act per K. A. R. 21-46-2 (*a*). (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-46-3. Student admission to schools. Student admissions to schools are covered by the provisions of the Kansas act against discrimination. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

Appendix

SUGGESTED HEARING GUIDELINES FOR USE BY HEARING EXAMINERS AND PARTIES

I. A pre-hearing conference, limited to counsel for complainant, counsel for respondent, counsel for the Commission and hearing examiner will be conducted prior to the public hearing in an effort to agree upon facts not in issue and to define the issues of the hearing. In the interest of substantial justice for all parties, evidence on issues arising during hearing but not delineated in the pre-hearing conference will be received and considered if in the judgment of the hearing examiner such issues are relevant to the case and the evidence offered is of probative value.

II. The hearing shall be informal so as to provide the necessary flexibility to adjust to varied conditions and circumstances and to avoid unnecessary and time-consuming technicalities. Informality is not synonymous with chaos or free-for-all; all parties will conduct themselves with dignity and decorum.

III. Each party is requested to prepare and present to the hearing examiner, prior to the opening of the hearing, a list of all witnesses he intends to call and all exhibits he intends to introduce. Should the hearing develop issues the resolution of which will require additional evidence, the hearing examiner will permit the calling of additional witnesses and the introduction of additional exhibits.

IV. The hearing shall be recorded in its entirety, and *only* the hearing officer shall control the record. Should it appear expeditious to go "off the record," counsel may state his justification for seeking to go off the record and the hearing examiner will grant or deny the request. When returning to the record, the hearing examiner shall make a brief statement on the record as to why the hearing went off record and summarize what transpired while off record, to which summary counsel will be asked to agree for the record.

V. In the interest of basing the hearing examiner's findings on all available evidence of reasonable probative value, evidence will be received in accordance with the rules of evidence prevailing in courts of law or equity, liberally construed.

VI. The hearing examiner is in effect a board of inquiry, responsible for getting complete and accurate facts from every available source. It is within the discretion of the hearing examiner to call or recall, or to permit the call or recall, of a witness as the exigencies of a case require. A party is not required to rest his case at any time during the hearing, and the hearing shall not be concluded until all available evidence of a reasonable probative value has been introduced.

VII. Oral arguments on motions shall be heard at the time the motion is made. Unless justice demands otherwise, decisions on motions presented during hearing shall be withheld pending completion of the hearing.

VIII. Parties may present oral summations and arguments at the conclusion of the presentation of all evidence, and they are encouraged to present written briefs together with suggested findings of fact and conclusions of law. However, neither a failure to orally sum up and argue nor a failure to submit written briefs and suggested findings of fact and conclusions of law shall operate to the detriment of any party in the final decision of the case.

IX. The decision of the hearing examiner will be based solely upon the evidence included in the hearing record, which record shall include all stipulations of parties, and unless otherwise raised, shall assume that there are no questions as to jurisdiction.

The majority of the rules and regulations are emergency rules and regulations and will continue in effect until December 31, 1974, or until they are made permanent at an earlier date.

THE KANSAS COMMISSION ON CIVIL RIGHTS

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Kaufman Building, Room 406 212 South Market, Wichita, Kansas 67202
Telephone (316) 265-9624

RECOMMENDATION:

The amended version of Senate Bill No. 97 has several ambiguous provisions which could lend itself to multiple interpretations.

I would recommend Senate Bill #97 be amended to include the following language which is similar to that appearing in Title VII of the 1964 Civil Rights Act, Section 706:

Section 1. Any city may by ordinance adopt by reference the provisions of article 10 of chapter 44 of the Kansas Statutes Annotated, known as the Kansas Act Against Discrimination.

Section 2. In the case of an alleged unlawful discriminatory act occurring in a City, which has such an ordinance described in Section 1, no charge based upon such act may be filed with the Kansas Commission on Civil Rights by the person aggrieved before the expiration of thirty (30) days after a complaint alleging such act has been filed with the civil rights commission of such city: Provided, that in the interest of expediting the processing of complaints alleging unlawful discrimination, the civil rights commission of such cities may enter into agreements or "memorandum of understanding" with the Kansas Commission on Civil Rights, which agreements may set forth the procedures of this relationship including a lengthening or shortening of the foregoing jurisdiction of such city civil rights commission.

M E M O R A N D U M

TO: Members of the Federal and State Affairs Committee

FROM: Wichita Women Political Caucus Annabelle Haupt

SUBJECT: We, the Women of the Wichita Caucas have some concern on the Civil Rights Bill in your Committee. We oppose SB-43 and SB-97 for the following reason:

DATE: March 21, 1975

1. Page 10. Serving copy of charge within seven (7) days after the filing. We prefer just notifying respondent we have received the complaint.

2. Page 10. 14 days time limit to obtain a Conciliation Agreement this will result in less conciliation.

3. Page 12. Change statute of limitations from 6 months to 4 months. We prefer that the statute of limitations remain at 6 months.

4. Page 14. New Section 5. Permit respondent to file a Civil action against complainant for malicious prosecution could result in chilling effect.

5. Page 15. New Section 8. Limits amount of monetary award also requires unemployment benefits to be deducted from the total settlement. This is contrary to case law on damages. See Tidwell vs. American Oil Co., 10 Circuit.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D. C. 20506

OFFICE OF
THE CHAIRMAN

2 MAR 1975

Honorable Robert F. Bennett
Governor, State of Kansas
Cedar Crest
Topeka, Kansas 66612

Dear Governor Bennett:

Senate Bill No. 43, presently pending before the Senate Special Committee on Federal and State Affairs, has recently come to our attention. In its present form Sections 4 and 5 of the bill will, in our opinion, conflict with the intent of Title VII, as amended, 42 U. S. C. §2000-e.

Section 4 requires a charging party, as a prerequisite to formal investigation of an alleged charge, to be interviewed "to determine whether a reasonable basis exists for the filing of a complaint" after his grievance has been reviewed by either a Commissioner or a member of the staff.

This procedure will, in our view, create the following problems:

1. A staff person or a Commissioner is required to "review" the complaint, meet with the charging party, and determine whether there is "reasonable basis" for filing a complaint.

The preliminary administrative determination will no longer be whether or not the charge is in the proper form and alleges a cause of action within the jurisdiction of the Commission; rather, it is finding "reasonable basis", a substantive judgement, that means a decision based on a preliminary investigation of the charge. The term "reasonable basis" does not have readily established perameters, and is not susceptible to easy definition. It will require considerable time to study a matter and acquire supporting data from the charging party sufficient to meet the "reasonable basis" determination.

2. Notice is required to the respondent within three (3) days of the receipt of the grievance by the Commission.

Prior to the determination of a "reasonable basis" to file a complaint the Commission is required to notify the respondent of the nature of the grievance and the allegations of the persons filing the grievance. The respondent, however, has no duty or obligation at this state. The danger of retaliation against the complainant looms as a major possibility; a danger recognized by the Supreme Court of Kansas in Atchinson, Topeka and Santa Fe Railway Co. vs. Kansas Commission on Civil Rights (No. 47, 526 Dec. 1974) when they refused to require identification of class discrimination complainants to the respondents in the investigative stage.

3. The time for filing the complaint is shortened.

A complaint must be filed within six (6) months after the alleged act of discrimination. The time for filing a complaint will be reduced by the time the staff takes to complete the investigation to determine if there is "reasonable basis" for filing a complaint.

Section 5 provides for an action for malicious prosecution for an action brought under the Kansas Act against discrimination and complete discovery of the Kansas Commission on Civil Rights' files. The specific provision of an action for malicious prosecution will have a chilling effect on complainants. It will deter many people from coming forward because of fear of prosecution. It has been our experience that often discrimination has occurred but not in the manner perceived by the complainant. It was necessary for an investigator to review the facts before the truth could be determined. Allowing the respondent to charge malicious prosecution in "any proceeding commenced under the provisions of the Kansas Act.....", combined with the reasonable basis investigation and notice provisions of Section 4, will allow a respondent to file an action prior to the filing of a complaint, thus detering any investigation

Section 5, also allows complete discovery of the Kansas Commission's files. Many of the Commission's notes are gathered from the complainant in a manner similar to the attorney/client relationship, and for all the reasons we

recognize that relationship as privileged so should such staff files be privileged.

It is our desire, as we know it is yours, that aggrieved persons be afforded the maximum opportunity to receive justice under the law. We exist for that purpose.

It is our opinion that provisions of this bill will hinder the delivery of justice to citizens of your State. For that reason, we ask your serious consideration of this bill when it appears before you.

If our agency may be of further service to you during your deliberations on this matter please do not hesitate to call upon us.

Sincerely,

John H. Powell, Jr.
Chairman