

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice-Chairperson Clyde Graeber at 3:30 p.m. on January 17, 1995 in Room 313-S of the Capitol.

All members were present except:
Representative Mike O'Neal - Excused
Representative Belva Ott - Excused
Representative Tony Powell - Excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfschle, Committee Secretary

Conferees appearing before the committee:
Randy Hearrell, Research Director Kansas Judicial Council
Lisa Moots, Executive Director Kansas Sentencing Commission

Others attending: See attached list

Randy Hearrell, Research Director Kansas Judicial Council, appeared before the committee with several bill requests. The first was a clean-up amendment to K.S.A. 59-513. There is a error in the statute that was cited. In 1992, when the Legislature repealed the Uniform Simultaneous Death law, and enacted the Uniform Simultaneous Death Act, this statute was not amended to update the cites, (Attachment 1).

Representative Garner made a motion to have the bill request introduced as a committee bill. Representative Nichols seconded the motion. The motion carried.

The second bill request dealt with K.S.A. 58-1204, Uniform Trustee's Powers Act. There is a statement in that act which provides that the trustee shall not transfer his or her office to another or delegate the entire administration of the trust to a court trustee or another. There is conflicting language in K.S.A. 9-2107 & 17-5004 and the bill request would add language which states "except as provided in those two sections". (Attachment 2)

Representative Goodwin made a motion to have the bill request introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

The next bill request related to K.S.A. 59-1301, classification of demands, which states that "if an estate is insufficient to pay in full all the demands allowed against it, payment shall be made in the following order." In 1992 SRS received a mandate from the federal government that they must collect medicaid payments. Language was put into the statute to make it a first class claim. The mandate was that it needed to be in the statute but it was not mandated that it needed to be a first class claim. The Judicial Council is proposing that it be moved to a second class claim. (Attachment 3)

Representative Pauls made a motion to have the bill request introduced as a committee bill. Representative Spangler seconded the motion. The motion carried.

The fourth request dealt with revocation of probate and nonprobate transfers by divorce, K.S.A. 59-610. This would strike the last sentence from the Uniform Probate Code and would revoke all transfers upon divorce. (Attachment 4).

Representative Goodwin made a motion to have the bill request introduced as a committee bill. Representative Heinemann seconded the motion. The motion carried.

The last dealt with amendments to the Administrative Procedure Act and the Judicial Review Act. The draft addresses the difficulties in computing the time for seeking judicial review of an agency order in light of the decision in United Steelworkers of America v. Kansas Comm'n on Civil Rights. There are amendments that relate to service of the petition for judicial review on the agency. Such service is jurisdictional and most of

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 17, 1995.

amendments are aimed at assisting parties in identifying the appropriate agency person for service. This would also require state agencies to provide a written explanation when the time for rendering an order is extended for "good cause." (Attachment 5)

Representative Heinemann made a motion to have the bill request introduced as a committee bill. Representative Garner seconded the motion. The motion carried.

Lisa Moots, Executive Director Kansas Sentencing Commission, appeared before the committee to give background information on the Sentencing Commission and the Criminal Justice Coordinating Council. The Sentencing Commission was created in 1989 to study the existing sentencing system and recommendations were made which resulted in the Sentencing Guidelines. A version of the guidelines were passed in 1992, revisions were made in 1993 and the Guidelines took effect on July 1, 1993. They apply to all felony adult offenses committed on or after that date.

During the 1994 Legislative session a number of issue arose regarding criminal justice policy. There was no agency to deal with the policy issues. The legislature created the Kansas Criminal Justice Coordinating Council to handle these issues. The Council also has the duty to administrator any Federal Grant money that is available to the State of Kansas. The Council was asked to create a Juvenile Justice Task Force, which is scheduled to report back to the Legislature with its recommendations and research findings during February. One of the responsibilities of the Tasks Force is to determine who really should be in youth centers.

Representative Adkins requested that she explain the process of retroactivity. Ms. Moots stated that retroactivity is never ending. There are people returning to prison from probation that may fall into the retroactivity pool. Retroactivity worked in this fashion, for those inmates whose crime occurred before July 1, 1993 but who were still in prison on that date, the Department of Corrections was required to review their case and figure out that if their crime had been committed after July 1, 1993 what kind of sentence would the guidelines have imposed. If the answer was that the guidelines called for a non-prison sanction, that person then fell into the retroactivity pool. The Department of Corrections was required to look that the criminal history and determine where he would land on the grid. A report went out the courts, inmate and prosecutor and any of the parties had 30 days to challenge the report. A hearing was then scheduled to determine if the severity level, criminal history was figured correctly and did the court want to impose a departure sentence. The majority of the cases did not result in any change.

Representative Adkins asked what percentage of cases are departures. Ms. Moots responded that departures are somewhere between 11-15%, however, many of the departures are for drug cases and are usually downward departures. The courts believe that the drug sentences are too lengthy.

The committee meeting adjourned at 4:30 p.m. The next committee meeting is scheduled for January 18, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 17, 1995

| NAME | REPRESENTING |
|----------------|-----------------------|
| Amy Howell | |
| Kyle Smith | KBI |
| Lisa Moots | KSC |
| Helen Stephens | KPOA / KSA |
| Tim Clark | KC DAA |
| WALT DARLING | Ks DIVISION OF BUDGET |
| Jan Johnson | Dept of Corrections |
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_____ Bill No. _____

59-513. Incapacity of one who kills another to take from decedent's estate or property; effect of suicide by one who kills spouse on estates and property of both. No person who shall be convicted of feloniously killing, or procuring the killing of, another person shall inherit or take by will by intestate succession, as a surviving joint tenant, as a beneficiary under a trust or otherwise from such other person any portion of the estate or property in which the decedent had an interest: *Provided*, That when any person shall kill or cause the killing of his or her spouse, and shall then take his or her own life, the estates and property of both persons shall be disposed of as if their deaths were simultaneous pursuant to the provisions of K.S.A. ~~58-701 to 58-705~~ 58-708 to 58-718, inclusive, and amendments thereto.

Comment

This is a "clean-up" amendment. In 1992 when L. 1992, ch. 97 repealed the "Uniform Simultaneous Death law" (K.S.A. 58-701 to 58-707) and enacted the "Uniform Simultaneous Death Act" (K.S.A. 58-708 to 58-718), this statute was not amended to update the cites.

_____ Bill No. _____

58-1204. Trustee's office not transferable. Except as provided in K.S.A. 9-2107 and 17-5004, the trustee shall not transfer his or her office to another or delegate the entire administration of the trust to a cotrustee or another.

MARVIN E. THOMPSON
MARK ARTHUR, JR.
DENNIS R. DAVIDSON
—
CLIFFORD R. HOLLAND
(1897-1953)

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525 MAIN STREET
RUSSELL, KANSAS 67065
913/483-3195

April 25, 1994

Mr. Randy Hearrell
Kansas Judicial Council
301 West Tenth Street
Topeka, Kansas 66612-1507

Dear Randy:

I have recently encountered what appears to me to be a conflict in the statutes relating to trustees.

The Uniform Trustees' Powers Act, K.S.A. 58-1204, provides:

The trustee shall not transfer his or her office to another or delegate the entire administration of the trust to a co-trustee or another.

The 1993 legislature amended Article 21 of Chapter 9 relating to banks and trust companies.

K.S.A. 9-2107 defines "contracting trustees" to include banks having trust authority under the state bank commissioner or under the comptroller of the currency, and further defines "originating trustee" as banks having their principal place of business in this state which have trust powers.

The statute further provides:

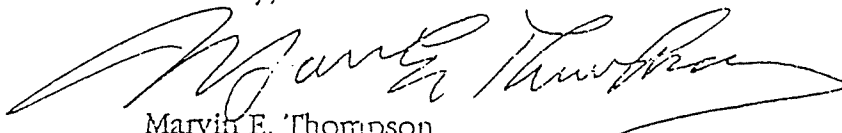
- (b) Any contracting trustee and any originating trustee may enter into an agreement whereby the contracting trustee, without any further authorization of any kind, succeed[s] to and be substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. No such agreement shall become effective unless notice thereof has been filed with the commissioner pursuant to subsection (f), and the commissioner has not disapproved the notice within 60 days thereafter.

Mr. Randy Hearrell
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April 25, 1994

In my opinion, the mere fact that the banking statute uses the phrase "succeed to and be substituted for" rather than the word "transfer" does not prevent the statutes from being in conflict.

Because of this conflict, I am wondering if the Council might desire to ask the Probate Code Committee to look at the problem.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin E. Thompson". The signature is written in dark ink and is positioned above the printed name.

Marvin E. Thompson
THOMPSON, ARTHUR & DAVIDSON

MET/grp

Article 13.—CLASSIFICATION AND
PAYMENT OF DEMANDS

59-1301. Classification of demands. If the applicable assets of an estate are insufficient to pay in full all demands allowed against it, payment shall be made in the following classified order:

First class, the expenses of an appropriate funeral in such amount as was reasonably necessary, having due regard to the assets of the estate available for the payment of demands and to the rights of other creditors, ~~and, following the allowance of such expenses, any claim for medical assistance paid under subsection (e) of K.S.A. 39-709 and amendments thereto.~~ Any part of the funeral expenses allowed as a demand against the estate in excess of the sum ascertained as above shall be paid as other demands of the fourth class.

delete

Second class, the appropriate and necessary costs and expenses of administration ~~and~~ the reasonable sums for the appropriate and necessary expenses of the last sickness of decedent, including wages of servants.

and any claim for medical assistance paid under subsection (e) of K.S.A. 39-709 and amendments thereto.

Third class, judgments rendered against decedent in the decedent's lifetime, all judgments or liens upon the property of the decedent shall be paid in the order of their priority.

Fourth class, all other demands duly proved, including the cost of any appropriate tombstone or marker or the lettering thereon, in such amount as may be reasonably necessary, but whether there shall be an allowance, and if so the amount thereof, shall be determined by the court before any obligation therefor is incurred, ~~except that debts having preference by the laws of the United States and demands having preference by the laws of this state shall be paid according to such preference.~~

delete

Except as provided by this section ~~for the first class of demands,~~ no preference shall be given in the payment of any demand over any other demand of the same class, nor shall a demand due and payable be entitled to preference over demands not due,

delete

History: L. 1939, ch. 180, § 95; L. 1941, ch. 284, § 4; L. 1992, ch. 150, § 8; April 30.

except that debts having preference by the laws of the United States and demands having preference by the laws of this state shall be paid according to such preference.

Approved 10/7/94
Further amended 12/2/94

_____ Bill No. _____

An Act related to Revocation of Probate and Nonprobate Transfers by Divorce.

(a) Definitions:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of K.S.A. 59-504, 59-505 and 59-6a201 et. seq. A decree of separate maintenance is not a divorce for purposes of this section.

(3) "Divorced individual" includes an individual whose marriage has been annulled.

(4) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type executed by the divorced individual before the divorce or annulment of the marriage to the former spouse.

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(6) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of the former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made

between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable (i) disposition or appointment of property made by a divorced individual to the former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and (iii) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship [or as community property with the right of survivorship], transforming the interests of the former spouses into tenancies in common in accordance with their equitable ownership.

(c) Effect of Severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of Revocation. Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) Revival if Divorce Nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(f) No Revocation for Other Change of Circumstances. No change of circumstances other than as described in this section and in K.S.A. 59-513 effects a revocation.

(g) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party

received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(2) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action.

(h) Protection of Bona Fide Purchasers; Personal Liability of Recipient.

(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

ISA 59-610 - delete last sentence

from Uniform probate code

77-514. Presiding officer. (a) The agency head or one or more other persons designated by the agency head may be the presiding officer.

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

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

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

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(f) A state agency may enter into agreements with another state agency to provide hearing officers to conduct proceedings under this act or for other agency proceedings.

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

77-519. Pleadings, motions, briefs; service. (a) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, objections, and motions, including, but not limited to, motions to dismiss and motions for summary judgment and objections.

(b) The presiding officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law and proposed initial or final orders.

(c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by state agency rule and regulation.

77-522. Discovery; authorization; requests; subpoenas, discovery orders and protective orders. (a) Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties. Requests for discovery shall be made in writing to the presiding officer and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery requests. The presiding officer may issue subpoenas, discovery orders and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas issued by the presiding officer ~~shall~~ may be served by a person designated by the presiding officer or any other person who is not a party and is not less than 18 years of age or may be served by certified mail, return receipt requested. Service shall be ~~in person and~~ at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas and orders issued by the presiding officer may be enforced pursuant to the provisions of the act for judicial review and civil enforcement of agency actions.

77-526. Orders, initial and final; exception for state corporation commission. (a) If the presiding officer is the agency head or designated in accordance with subsection (g) of K.S.A. 77-514 and amendments thereto, the presiding officer shall render a final order.

(b) If the presiding officer is ~~not~~ neither the agency head nor designated in accordance with subsection (g) of K.S.A. 77-514 and amendments thereto, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 77-527 and amendments thereto.

(c) A final order or initial order shall include, separately stated, findings of fact conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order. If the presiding officer has been designated in accordance with subsection (g) of K.S.A. 77-514 and amendments thereto, the final order shall so state. Any final order, for which a petition for reconsideration is not a prerequisite for seeking judicial review, and any initial order, for which further administrative review is not available, shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(e) If a substitute presiding officer is appointed pursuant to K.S.A. 77-514 and amendments thereto, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(f) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before expiration of the 30 days.

(h) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, on the agency head in the manner prescribed by K.S.A. 77-531 and amendments thereto.

(i) Notwithstanding the other provisions of this section, if the presiding officer in a hearing before the state corporation commission is not the agency head, the presiding officer shall not render an initial order but shall make written findings and recommendations to the commission. The commission shall render and serve a final order within 60 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before expiration of the 60 days.

77-527. Review of initial order; exceptions to reviewability. (a) The agency head, upon its own motion may, and upon petition by any party or when required by law shall, review an initial order, except to the extent that:

(1) A provision of law precludes or limits state agency review of the initial order; or

(2) the agency head (A) determines to review some but not all issues, or not to exercise any review, (B) delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or (C) authorizes one or more persons to review the initial order, subject to further review by the agency head.

(b) A petition for review of an initial order must be filed with the agency head, or with any person designated for this purpose by rule and regulation of the state agency, within 15 days after service of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within 15 days after its service. If the agency head determines not to review an initial order in response to a petition for review, the agency head shall, within 20 days after filing of the petition for review, serve on each party an order stating that review will not be exercised.

(c) The petition for review shall state its basis. If the agency head on its own motion gives notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(d) In reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties.

(e) The agency head or designee shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) The agency head or designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency head or designee may order such temporary relief as is authorized and appropriate.

(g) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with the written consent of all parties or for good cause shown.

(h) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by subsection (c) of K.S.A. 77-526 and amendments thereto.

(i) The agency head shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by K.S.A. 77-531 and amendments thereto.

(j) Unless a petition for reconsideration is a prerequisite for seeking judicial review, a final order under this section shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

77-529. Reconsideration. (a) Any party, within 15 days after service of a final order, may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review except as provided in K.S.A. 44-1010 and 44-1115, and amendments thereto, concerning orders of the Kansas human rights commission, K.S.A. 55-606 and 66-118b, and amendments thereto, concerning orders of the corporation commission and K.S.A. 74-2426 and amendments thereto concerning orders of the board of tax appeals.

(b) Within 30 days after filing of the petition, The the agency head shall render a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings or, without denying or granting the petition, giving notice that the petition for reconsideration has been scheduled for further consideration. The petition may be granted, in whole or in part, only if the agency head states, in the written order findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the order. ~~The petition is deemed to have been denied if the agency head does not dispose of it within 20 days after the filing of the petition.~~

An order under this section shall be served on the parties in the manner prescribed by K.S.A. 77-531 and amendments thereto.

(c) Any order rendered upon reconsideration or any order denying a petition for reconsideration shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

(d) For purposes of this section, "agency head" shall include a presiding officer designated in accordance with subsection (g) of K.S.A. 77-514 and amendments thereto.

77-549. Same; application for an order; when proceedings required; agency head defined; final orders. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative procedure act.

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

(c) For purposes of the Kansas administrative procedure act, the director of taxation shall be deemed the agency head in regard to orders rendered by the director under chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(d) Final orders of the director of taxation pursuant to K.S.A. 77-526 and amendments thereto, shall be rendered in writing and served within 120 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) of K.S.A. 77-526 and amendments thereto, unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before expiration of the 120 days.

New Sec. 77-608a. Same; agency failure to act. A person aggrieved by the failure of an agency to act in a timely manner as required by K.S.A. 77-526, 77-529 or 77-549, and amendments thereto, or as otherwise required by law, is entitled to interlocutory review of the agency's failure to act.

77-612. Exhaustion of administrative remedies. A person may file a petition for judicial review under this act only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review, but:

(a) A petitioner for judicial review of a rule or regulation need not have participated in the rulemaking proceeding upon which that rule and regulation is based, or have petitioned for its amendment or repeal; ~~and~~

(b) a petitioner for judicial review need not exhaust administrative remedies to the extent that this act or any other statute states that exhaustion is not required; and

(c) a petitioner for judicial review need not seek reconsideration unless a statute makes the filing of a petition for reconsideration a prerequisite for seeking judicial review.

77-613. Time for filing petition; service of order, pleading or other matter. Subject to other requirements of this act or of another statute:

(a) A petition for judicial review of a rule and regulation may be filed at any time, except as otherwise provided by law.

(b) If reconsideration has not been requested and is not a prerequisite for seeking judicial review, A petition for judicial review of an a final order is not timely unless shall be filed within 30 days after service of the order, ~~but the time is extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies.~~

(c) If reconsideration has been requested or is a prerequisite for seeking judicial review, a petition for judicial review of a final order shall be filed within 30 days after service of the order rendered upon reconsideration or within 30 days after service of an order denying the request for reconsideration.

(d) A petition for judicial review of agency action other than a rule and regulation or a final order is not timely unless shall be filed within 30 days after the agency action, but the time is extended:

(1) During the pendency of the petitioner's timely attempts to exhaust administrative remedies; and

(2) during any period that the petitioner did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this act.

(d)(e) Service of an order, pleading or other matter shall be made upon the parties to the agency proceeding and their attorneys of record, if any, by delivering a copy of it to them or by mailing a copy of it to them at their last known addresses. Delivery of a copy of an order, pleading or other matter means handing it to the person being served or leaving it at that person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed

to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order, pleading or other matter and it is served by mail, three days shall be added to the prescribed period. Unless reconsideration is a prerequisite for seeking judicial review, a final order shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

77-614. Petition; filing and contents; responsive pleading, filing and service. (a) A petition for judicial review shall be filed with the clerk of the court.

(b) A petition for judicial review shall set forth:

- (1) The name and mailing address of the petitioner;
- (2) the name and mailing address of the agency whose action is at issue;
- (3) identification of the agency action at issue, together with a duplicate copy, summary or brief description of the agency action;
- (4) identification of persons who were parties in any adjudicative proceedings that led to the agency action;
- (5) facts to demonstrate that the petitioner is entitled to obtain judicial review;
- (6) the petitioner's reasons for believing that relief should be granted; and
- (7) a request for relief specifying the type and extent of relief requested.

(c) Within 30 days after service on the agency or notice to other parties of the petition is filed as provided in K.S.A. 77-615 and amendments thereto, a party to judicial review proceedings may file an answer or other responsive pleading and shall serve a copy of any such answer or pleading in the manner provided by subsection (d) of K.S.A. 77-613 and amendments thereto upon all parties to the proceedings.

77-615. Petition, service and notice. (a) A petitioner for judicial review shall serve a copy of the petition in the manner provided by subsection (d) of K.S.A. 77-613 and amendments thereto upon the agency head, or on any other person or persons designated by the agency head to receive service, or on any agency officer designated to receive service in an order, or on the agency officer who signs an order.

(b) The petitioner shall give notice of the petition for judicial review to all other parties in any adjudicative proceedings that led to the agency action.