Approved: 1/22/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Carmody 3:30 p.m. on January 15, 1996 in Room 313-S of the Capitol.

All members were present except: Phill Kline-excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Randy Harrell, Judicial Council
Ken Keller, Western Extralite
Ron Smith, Kansas Bar Association

Others attending: See attached list

The Chair called the meeting to order at 3:35 p.m. and requested that the members introduced themselves. The Chair referred to the Committee Rules. The committee members discussed various rules. (Attachment 1)

A motion was made by Representative Mays and second by Representative Powell to adopt the Committee Rules. The motion passed.

The Chair related goals and expectations for the committee to the members.

Discussion followed.

The Chair referred to handout concerning suggestions to conferees and stated that the Conferee Rules/Guidelines will be posted.

Bill Introductions:

Mr. Randy Harrell, Judicial Council explained the establishment and function of the Judicial Council.

Mr. Harrell requested the introduction of a bill that would change the definition of Valid Settlement Agreement. (Attachment 2)

A motion was made by Representative Kriebel and second made by Representative Pauls to introduce as a committee bill. The motion carries.

The conferee requested the introduction of two bills relating to the transfer-on -death (TOD) of motor vehicles and real estate. (Attachment 2)

A motion was made by Representative Kriebel and second made by Representative Pauls to introduce as committee bills. The motion carried.

Mr. Harrell requested the introduction of a bill that restores civil rights to persons convicted of felonies with dispositions which do not involve commitment to the custody of the secretary of corrections or persons convicted of felonies on or after July 1, 1997 upon termination of probation or assignment to community corrections. (Attachment 2)

The committee members discussed issues regarding the loss of civil rights of persons convicted of felonies and placed on probation. Mr. Harrell stated that Matt Lynch from the Judicial Council will provide additional information and answer questions on this issue.

The conferee requested the introduction of a bill that would create a central office for administrative law judges under the office of administrative hearings. (Attachment 2)

A motion was made by Representative Kriebel and second made by Representative Pauls to introduce as a committee bill. The motion carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY room 313-S Statehouse, at 3:30 p.m. on January 15, 1997.

Mr. Harrell requested a technical amendment to K.S.A. 17-4911 regarding Transfer Agents. (Attachment 2)

A motion was made by Representative Kriebel and second made by Representative Pauls to introduce as a committee bill. The motion carried.

Mr. Harrell requested a bill that would recoup county defense cost from the defendant. (Attachment 2)

A motion was made by Representative Kriebel and second made by Representative Pauls to introduce as a committee bill. The motion carried.

Mr. Harrell discussed the introduction of lien law amendments and suggested that those amendments could be the subject of an interim committee. (Attachment 2)

The conferee reviewed Judicial Council Senate Bills to be introduced this session.

Mr. Ken Keller, Western Extralite addressed the Committee and presented a request for a bill that would extend the time for filing contractor liens from three months to six months on nonresidential construction contracts. (Attachment 3)

A motion was made by Representative Powell and second made by Representative Garner to introduce the bill requested by Mr. Keller. The motion passed.

Mr. Ron Smith, Kansas Bar Association presented a request for three bill introductions. (Attachment 4)

The conferee requested a bill that would amend K.S.A. 60-245a regarding business records subpoena clarifications. The conferee discussed with the Committees members the need for this bill. The conferee stated that K.S.A. 60-245a is part of the amendments to the civil procedure bill, **HB 2007.** After discussion it was the consensus of the Committee to amend the provisions of this bill request into **HB 2007.**

Mr. Smith proposed a bill that would update current statute by automatically releasing all mortgages not refiled according to law if the mortgages are more than thirty-two years old.

A motion was made by Representative Shriver and second by Representative Shultz to introduce as a bill. The motion carries.

Mr. Smith requested a bill concerning minority shareholder rights as recommended by a special subcommittee of KBA Corporate Law section.

A motion was made by Representative Mays and second by Representative Garner to recommend introduction of a bill concerning minority shareholder rights. The motion carries.

The committee members discussed issues concerning the use of subcommittees.

The Chair adjourned the meeting at 4:30 p.m.

The next meeting is scheduled for January 16, 1996.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 1-15-97

NAME	REPRESENTING
Judy M. Harrell	Judicial Council
Paul Shelby	OJA
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KS
Whitney Damron	Kansas Bar Assn.
Jeff Bridges	DOB
Barbara Tombs	KSC
Julie Meyer	KSC
Callie Denton	Bottenberg & Assoc
Susan Babcock	Hein + Wein
Jolene M. Isabell	KTLA

#1

JUDICIARY COMMITTEE RULES

1. In any case where committee rules do not apply, House Rules shall govern. All powers, duties and responsibilities not addressed herein are reserved to the chair.

2. Smoking is prohibited in committee rooms.

3. Cellular phones and pagers are prohibited in the Committee room, unless audible tones or ringers are disabled. Out of respect for other committee members and conferees, committee members will refrain from operating lap-top computers, cellular phones or other devices in the committee room during a meeting.

4. The chair shall determine the committee agenda, including scheduling and the order of business.

5. The chair reserves the right to limit testimony that is cumulative in nature and may limit testimony, when necessary, to a specific number of minutes.

6. Committee members shall not address conferees until and unless permission is granted by the chair.

7. The chair reserves the right to limit questioning of conferees by committee members in the interest of time and in the interest of fairness to conferees and other committee members.

8. Committee members shall not be approached during committee hearings or deliberations by anyone other than fellow legislative members or legislative staff.

9. No conferee shall be interrupted during presentations of their testimony, except with the permission of the chair.

10. Questioning of a conferee shall be limited to the subject matter of the agenda item for the day, except as may otherwise be allowed by the chair.

11. No bill or resolution shall be taken up for a committee vote unless announced by the chair.

12. Amendments to motions are not in order.

13. A substitute motion is in order, but no additional substitute motion shall be in order until the prior substitute motion is disposed of.

14. A motion requires a second to be in order. A motion may be withdrawn only upon consent of the member making the motion and his or her second.

15. A motion to table or take from the table shall be in order only when such item is on the agenda or is taken up by the chair. The motion requires a simple majority and is, unless otherwise determined by the chair, non-debatable.

16. There shall be no recording, audibly, photographically or otherwise, of committee voting except by the committee secretary.

17. A request from any member that his or her own vote be recorded shall be granted. A request to record the vote of another member will not be granted.

18. Granting excused absences is reserved to the chair.

19. The chair reserves the right to take such action as may be necessary to prevent disruptive behavior in the committee room during hearings and deliberations.

20. Adjournment is reserved to the chair.

House Judiciary
Attachment 1
1/15/97

#1

1/15/97

1997 JUDICIAL COUNCIL BILL REQUESTS

Description	Page
Amendment to Definition of Valid Settlement Agreement	2
Relating to TOD Transfers of Motor Vehicles	3
Relating to TOD Transfers of Real Estate	5
Effects of Felony Convictions on Civil Rights	13
Creating Central Office of Administrative Law Judges	22
Amendment to 17-4911 regarding Transfer Agents	45
Recoupment of county defense costs	46
Lien Law Amendments	

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House Judiciary
Attachment 2
1/15/97

59-102. Definitions. As used in this act, unless the context otherwise indicates:

(8) "Valid settlement agreement" means a written and acknowledged instrument which affects the administration or distribution of the estate and which is entered into by all interested heirs, devisees, ~~and~~ legatees~~;~~ and ~~all other interested or affected~~ persons whose interests are affected by the settlement agreement, all of whom must be competent or authorized to enter into such agreement.

TOD TRANSFERS OF MOTOR VEHICLES

Section 1. A motor vehicle, as defined by K.S.A. 8-126(b), may be titled in transfer-on-death (TOD) form by including in the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all perfected lien holders.

Section 2. A motor vehicle is registered in transfer-on-death form by designating on the certificate of title, the name of the owner, the names of tenant-in-common owner or the names of the joint-tenant-with-right-of survivorship owners, followed in substance by the words "transfer on death to _____(name of beneficiary or beneficiaries)_____." Instead of the words "transfer on death to" the abbreviation "TOD" may be used.

Section 3. The TOD beneficiary or beneficiaries shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or all of the joint-tenant-with-right-of-survivorship owners then surviving without the consent of the beneficiary or beneficiaries by filing an application for a subsequent certificate of title.

Section 4. Ownership of a motor vehicle titled in TOD form for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all perfected lien holders.

Section 5. A certificate of title in TOD form shall not be considered a testamentary

disposition or be invalidated due to nonconformity with the provisions of chapter 59 of the Kansas Statutes Annotated.

11/22/96

TOD TRANSFERS OF REAL ESTATE

Section 1. (a) An interest in real estate may be titled in transfer-on-death (TOD) form by recording a deed signed by the record owner of such interest, designating a grantee beneficiary or beneficiaries of the interest. Such deed shall transfer ownership of such interest upon the death of the owner. A TOD deed need not be supported by consideration.

(b) The signature, consent or agreement of or notice to a grantee beneficiary of a TOD deed shall not be required for any purpose during the lifetime of the record owner.

Section 2. An interest in real estate is titled in transfer-on-death form by executing, acknowledging and recording in the office of the register of deeds in the county where the real estate is located, prior to the death of the owner, a deed in substantially the following form:

> A.B. as owner transfers on death to C.D., as grantee beneficiary, the following described interest in real estate: (here insert description of the interest in real estate). THIS TRANSFER ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN REAL ESTATE.

Instead of the words "transfer on death" the abbreviation "TOD" may be used.

Section 3. (a) A designation of the grantee beneficiary may be revoked at any time prior to the death of the record owner, by executing, acknowledging and recording in the office of the register of deeds in the county where the real estate is located an instrument describing the interest revoking the designation. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required.

(b) A designation of the grantee beneficiary may be changed at any time prior to the death of the record owner, by executing, acknowledging and recording a subsequent TOD deed in accordance with section 2. The signature, consent or agreement of or notice to the grantee beneficiary or beneficiaries is not required. A subsequent TOD beneficiary designation revokes all prior designations of grantee beneficiary or beneficiaries by such record owner for such interest in real estate.

(c) A TOD deed executed, acknowledged and recorded in accordance with this act may not be revoked by the provisions of a will.

Section 4. (a) Title to the interest in real estate recorded in TOD form shall vest in the designated grantee beneficiary or beneficiaries on the death of the record owner.

(b) Grantee beneficiaries of a TOD deed take the record owner's interest in the real estate at death subject to all conveyances, assignments, contracts, mortgages, liens and security pledges made by the record owner or to which the record owner was subject during the record owner's lifetime including, but not limited to, any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust, or lien, and to any interest conveyed by the record owner that is less than all of the record owner's interest in the property.

(c) If a grantee beneficiary is the spouse of the record owner or any relative of the record owner by lineal descent or within the sixth degree, whether by blood or adoption, and such grantee beneficiary dies before the record owner, leaving issue who survived the record owner, such issue shall take the same estate which the grantee beneficiary would have taken if the grantee beneficiary had survived, unless a different disposition is made by the TOD deed.

As used in this subsection, "issue" means offspring, progeny, or lineal descendants, by blood or adoption, in whatever degree.

Section 5. (a) A record joint owner of an interest in real estate may use the procedures in this act to title such interest in TOD form. However, title to such interest shall vest in the designated grantee beneficiary or beneficiaries only if such record joint owner is the last to die of all of the record joint owners of such interest. A deed in TOD form shall not sever a joint tenancy.

(b) As used in this section, "joint owner" means a person who owns an interest in real estate as a joint tenant with right of survivorship.

Section 6. The provisions of K.S.A. 58-2414, and amendments thereto, apply to the grantor of a TOD deed.

Section 7. A deed in TOD form shall not be considered a testamentary disposition and shall not be invalidated due to nonconformity with the provisions of chapter 59 of the Kansas Statutes Annotated.

8-135. Transfer of ownership of vehicles; registration; fees and penalties; certificate of title, form, fee; assignment and reassignment; liens, statement of, release of, liability for failure to comply, notice of security interest, execution; purchase and sale of vehicle, requirements; assignment of foreign title, requirements; written consent by lienholder.

(a) Upon the transfer of ownership of any vehicle registered under this act, the registration of the vehicle and the right to use any license plate thereon shall expire and thereafter there shall be no transfer of any registration, and the license plate shall be removed by the owner thereof. It shall be unlawful for any person, other than the person to whom the license plate was originally issued, to have possession thereof. When the ownership of a registered vehicle is transferred, the original owner of the license plate may register another vehicle under the same number, upon application and payment of a fee of $1.50, if such other vehicle does not require a higher license fee. If a higher license fee is required, then the transfer may be made upon the payment of the transfer fee of $1.50 and the difference between the fee originally paid and that due for the new vehicle.

(b) Subject to the provisions of subsection (a) of K.S.A. 8-198, and amendments thereto, upon the transfer and sale of any vehicle by any person or dealer, the new owner thereof, within 30 days, inclusive of weekends and holidays, from date of such transfer shall make application to the division for registration of the vehicle, but no person shall operate the vehicle on any highway in this state during the thirty-day period without having applied for and obtained temporary registration from the county treasurer or from a dealer. After the expiration of the thirty-day period, it shall be unlawful for the owner or any other person to operate such vehicle upon the highways of this state unless the vehicle has been registered as provided in this act. For failure to make application for registration as provided in this section, a penalty of $2 shall be added to other fees. When a person has a current motorcycle or passenger vehicle registration and license plate, including any registration decal affixed thereto, for a vehicle and has sold or otherwise disposed of the vehicle and has acquired another motorcycle or passenger vehicle and intends to transfer the registration and the license plate to the motorcycle or passenger vehicle acquired, but has not yet had the registration transferred in the office of the county treasurer, such person may operate the motorcycle or passenger vehicle acquired for a period of not to exceed 30 days by displaying the license plate on the rear of the vehicle acquired. If the acquired vehicle is a new vehicle such person also must carry the assigned certificate of title or manufacturer's statement of origin when operating the acquired vehicle, except that a dealer may operate such vehicle by displaying such dealer's dealer license plate.

(c) Certificate of title: No vehicle required to be registered shall be registered or any license plate or registration decal issued therefor, unless the applicant for registration shall present satisfactory evidence of ownership and apply for an original certificate of title for such vehicle. The following paragraphs of this subsection shall apply to the issuance of a certificate of title for a nonhighway vehicle, as defined in K.S.A. 8-197, and amendments thereto, except to the extent such paragraphs are made inapplicable by or are inconsistent with K.S.A. 8-198, and amendments thereto.

(1) An application for certificate of title shall be made by the owner or the owner's agent upon a form furnished by the division and shall state all liens or encumbrances thereon, and such other information as the division may require. Notwithstanding any other provision of this section, no certificate of title, other than a duplicate title, shall be issued for a vehicle having any unreleased lien or encumbrance thereon, unless the transfer of such vehicle has been consented to in writing by the holder of the lien or encumbrance. Such consent shall be in a form approved by the division. In the case of members of the armed forces of the United States while the United States is engaged at war with any foreign nation and for a period of six months next following the cessation of hostilities, such application may be signed by the owner's spouse, parents, brother or sister. The county treasurer shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and if satisfied that the applicant is the lawful owner of such vehicle, or otherwise entitled to have the same registered in such applicant's name, shall so notify the division, who shall issue an appropriate certificate of title. The certificate of title shall be in a form approved by the division, and shall contain a statement of any liens or encumbrances which the application shows, and such other information as the division determines.

(2) The certificate of title shall contain upon the reverse side a form for assignment of title to be executed by the owner before a notary public or some other officer authorized to administer an oath. This assignment shall contain a statement of all liens or encumbrances on the vehicle at the time of assignment. The certificate of title shall also contain on the reverse side blank spaces so that an abstract of mileage as to each owner will be available. The seller at the time of each sale shall insert the mileage on the form filed for application or reassignment of title, and the division shall insert such mileage on the certificate of title when issued to purchaser or assignee. The signature of the purchaser or assignee is required on the form filed for application or reassignment of title, acknowledging the odometer certification made by the seller, except that vehicles which are 10 model years or older and trucks with a gross vehicle weight of more than 16,000 pounds shall be exempt from the mileage acknowledgment requirement of the purchaser or assignee. Such title shall indicate whether the vehicle for which it is issued has been titled previously as a nonhighway vehicle. In addition, the reverse side shall contain two forms for reassignment by a dealer, stating the liens or encumbrances thereon. The first form of reassignment shall be used only when a dealer sells the vehicle to another dealer. The second form of reassignment shall be used by a dealer when selling the vehicle to another dealer or the ultimate owner of the vehicle. The reassignment by a dealer shall be used only where the dealer resells the vehicle, and during the time that the vehicle remains in the dealer's possession for resale, the certificate of title shall be dormant. When the ownership of any vehicle passes by operation of law, or repossession upon default of a lease, security agreement, or executory sales contract, the person owning such vehicle, upon furnishing satisfactory proof to the county treasurer of such ownership, may procure a certificate of title to the vehicle. When a vehicle is registered in another state and is repossessed in another state, the owner of such vehicle shall not be entitled to obtain a valid Kansas title or registration, except that when a vehicle is registered in another state, but is financed originally by a financial institution chartered in the state of Kansas or when a financial institution chartered in Kansas purchases a pool of motor vehicle loans from the

resolution trust corporation or a federal regulatory agency, and the vehicle is repossessed in another state, such Kansas financial institution shall be entitled to obtain a valid Kansas title or registration.

(3) Dealers shall execute, upon delivery to the purchaser of every new vehicle, a manufacturer's statement of origin stating the liens and encumbrances thereon. Such statement of origin shall be delivered to the purchaser at the time of delivery of the vehicle or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays. The agreement of the parties shall be executed on a form approved by the division. In the event delivery of title cannot be made personally, the seller may deliver the manufacturer's statement of origin by restricted mail to the address of purchaser shown on the purchase agreement. The manufacturer's statement of origin may include an attachment containing assignment of such statement of origin on forms approved by the division. Upon the presentation to the division of a manufacturer's statement of origin, by a manufacturer or dealer for a new vehicle, sold in this state, a certificate of title shall be issued if there is also an application for registration, except that no application for registration shall be required for a travel trailer used for living quarters and not operated on the highways.

(4) The fee for each original certificate of title shall be $7 until July 1, 1996, and $4.50 thereafter, in addition to the fee for registration of such vehicle, trailer or semitrailer. The certificate of title shall be good for the life of the vehicle, trailer or semitrailer while owned or held by the original holder of the certificate of title.

(5) Upon sale and delivery to the purchaser of every vehicle subject to a purchase money security interest as defined in K.S.A. 84-9-107, and amendments thereto, the dealer or secured party may complete a notice of security interest and when so completed, the purchaser shall execute the notice, in a form prescribed by the division, describing the vehicle and showing the name and address of the secured party and of the debtor and other information the division requires. The dealer or secured party, within 10 days of the sale and delivery, may mail or deliver the notice of security interest, together with a fee of $2.50, to the division. The notice of security interest shall be retained by the division until it receives an application for a certificate of title to the vehicle and a certificate of title is issued. The certificate of title shall indicate any security interest in the vehicle. Upon issuance of the certificate of title, the division shall mail or deliver confirmation of the receipt of the notice of security interest, the date the certificate of title is issued and the security interest indicated, to the secured party at the address shown on the notice of security interest. The proper completion and timely mailing or delivery of a notice of security interest by a dealer or secured party shall perfect a security interest in the vehicle described on the date of such mailing or delivery. The county treasurers shall mail a copy of the title application to the Kansas lienholder. Each county treasurer shall charge the Kansas lienholder a $1.50 service fee for processing and mailing a copy of the title application to the Kansas lienholder.

(6) It shall be unlawful for any person to operate in this state a vehicle required to be registered under this act, or to transfer the title to any such vehicle to any person or dealer, unless a certificate of title has been issued as herein provided. In the event of a sale or transfer of ownership of a vehicle for which a certificate of title has been issued, which certificate of title is in the possession of the transferor at the time of delivery of the vehicle, the holder of

such certificate of title shall endorse on the same an assignment thereof, with warranty of title in a form prescribed by the division and printed thereon and the transferor shall deliver the same to the buyer at the time of delivery to the buyer of the vehicle or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays, after the time of delivery. The agreement of the parties shall be executed on a form provided by the division. The requirements of this paragraph concerning delivery of an assigned title are satisfied if the transferor mails to the transferee by restricted mail the assigned certificate of title within the 30 days, and if the transferor is a dealer, as defined by K.S.A. 8-2401, and amendments thereto, such transferor shall be deemed to have possession of the certificate of title if the transferor has made application therefor to the division. The buyer shall then present such assigned certificate of title to the division at the time of making application for registration of such vehicle. A new certificate of title shall be issued to the buyer, upon payment of the fee of $7 until July 1, 1996, and $4.50 thereafter. If such vehicle is sold to a resident of another state or country, the dealer or person making the sale shall notify the division of the sale and the division shall make notation thereof in the records of the division. When a person acquires a security agreement on a vehicle subsequent to the issuance of the original title on such vehicle, such person shall require the holder of the certificate of title to surrender the same and sign an application for a mortgage title in form prescribed by the division. Upon such surrender such person shall immediately deliver the certificate of title, application, and a fee of $7 until July 1, 1996, and $4.50 thereafter, to the division. Upon receipt thereof, the division shall issue a new certificate of title showing the liens or encumbrances so created, but not more than two liens or encumbrances may be shown upon a title. When a prior lienholder's name is removed from the title, there must be satisfactory evidence presented to the division that the lien or encumbrance has been paid. When the indebtedness to a lienholder, whose name is shown upon a title, is paid in full, such lienholder within 10 days after written demand by restricted mail, shall furnish to the holder of the title a release of lien or execute such a release in the space provided on the title. For failure to comply with such a demand the lienholder shall be liable to the holder of the title for $100 and also shall be liable for any loss caused to the holder by such failure. When the indebtedness to a lienholder, whose name is shown upon a title, is collected in full, such lienholder, within 30 days, shall furnish notice to the holder of title that such indebtedness has been paid in full and that such title may be presented to the lienholder at any time for release of lien.

(7) It shall be unlawful for any person to buy or sell in this state any vehicle required to be registered, unless, at the time of delivery thereof or at a time agreed upon by the parties, not to exceed 30 days, inclusive of weekends and holidays, after the time of delivery, there shall pass between the parties a certificate of title with an assignment thereof. The sale of a vehicle required to be registered under the laws of this state, without assignment of the certificate of title, is fraudulent and void, unless the parties shall agree that the certificate of title with assignment thereof shall pass between them at a time other than the time of delivery, but within 30 days thereof. The requirements of this paragraph concerning delivery of an assigned title shall be satisfied if (i) the seller mails to the purchaser by restricted mail the assigned certificate of title within 30 days, or (ii) if the transferor is a dealer, as defined by

K.S.A. 8-2401, and amendments thereto, such seller shall be deemed to have possession of the certificate of title if such seller has made application therefor to the division, or (iii) if the transferor is a dealer and has assigned a title pursuant to paragraph (9) of this subsection (c).

(8) In cases of sales under the order of a court of a vehicle required to be registered under this act, the officer conducting such sale shall issue to the purchaser a certificate naming the purchaser and reciting the facts of the sale, which certificate shall be prima facie evidence of the ownership of such purchaser for the purpose of obtaining a certificate of title to such motor vehicle and for registering the same. Any such purchaser shall be allowed 30 days, inclusive of weekends and holidays, from the date of sale to make application to the division for a certificate of title and for the registering of such motor vehicle.

(9) Any dealer who has acquired a vehicle, the title for which was issued under the laws of and in a state other than the state of Kansas, shall not be required to obtain a Kansas certificate of title therefor during the time such vehicle remains in such dealer's possession and at such dealer's place of business for the purpose of sale. The purchaser or transferee shall present the assigned title to the division of vehicles when making application for a certificate of title as provided in subsection (c)(1).

(10) Motor vehicles may be held and titled in transfer on death form.

AN ACT concerning crimes, punishment and criminal procedure; relating to effects of felony conviction on civil rights of convicted felons; maintenance of expungement records; amending K.S.A. 22-3722 and 43-158 and K.S.A. 1996 Supp. 21-4603d, 21-4611, 21-4615 and 21-4619 and repealing the existing sections.

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

Section 1. K.S.A. 1996 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of probation or community corrections placement;

(4) assign the defendant to a community correctional services program in presumptive nonprison cases or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed 180 days as a condition of probation followed by a 180-day period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program. If the defendant was classified in grid blocks 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court may impose a nonprison sanction on the condition that the offender complete the program at the Labette correctional conservation camp. Such a placement decision shall not be considered a departure and shall not be subject to appeal;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction. Such repayment of the amount of any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the law enforcement agency;

(9) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7) and (8); or

(10) suspend imposition of sentence in misdemeanor cases.

In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq. and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to section 1 and amendments thereto to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in the conservation camp and the defendant meets all of the conservation camp's placement criteria unless the court states on the record the reasons for not

placing the defendant in the conservation camp.

The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(b) For persons convicted of felonies prior to July 1, 1997, dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights.

(c) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(d) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(e) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp of an inmate sentenced to the secretary's custody if the inmate:

(1) Has been sentenced to the secretary for a probation revocation or as a departure from the presumptive nonimprisonment grid block of either sentencing grid; and

(2) otherwise meets admission criteria of the camp. If the inmate successfully completes the 180-day conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to 180 days of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(f) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal the provisions of this section shall not apply.

Section 2. K.S.A. 1996 Supp. 21-4611 is hereby amended to read as follows: 21-4611. (a)(1) The period of suspension of sentence, probation or assignment to community corrections fixed by the court shall not exceed five years in felony cases involving crimes committed prior to July 1, 1993, or two years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five years in such felony cases, nor two years in misdemeanor cases. In no event shall the total period of probation, suspension of sentence or assignment to community corrections for a felony committed prior to July 1, 1993, exceed the greatest maximum term provided by law for the crime, except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. Probation, suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court.

(2) For persons convicted of felonies on and after July 1, 1997, an order of termination of

probation or assignment to community corrections shall have the effect or restoring the civil rights lost under subsection (a) of K.S.A. 21-4615 and amendments thereto, and such order of termination shall so state. Such order of termination shall also state that it does not relieve the defendant of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony. A copy of such order of termination shall be provided to the defendant.

(b) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

(c) For all crimes committed on or after July 1, 1993, the recommended duration of probation in all felony cases is as follows:

(1) For nondrug crimes:

(A) Thirty-six months for crimes in crime severity levels 1 through 5; and

(B) 24 months for crimes in crime severity levels 6 through 10; and

(2) for drug crimes:

(A) Thirty-six months for crimes in crime severity levels 1 through 3; and

(B) 24 months for crimes in crime severity level 4.

(3) Except as provided in subsections (c)(4) and (c)(5), the total period in all cases shall not exceed 60 months, or the maximum period of the prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time.

(4) If the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid.

(5) The court may modify. or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

Section 3. K.S.A. 21-4615 is hereby amended to read as follows: 21-4615. ~~(1)~~ (a) A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction be ineligible to hold any public office under the laws of the state of Kansas, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case.

~~(2)~~ (b) The ineligibilities imposed by this section shall attach upon conviction and shall continue until such person is finally discharged from parole ~~or~~ , conditional release, postrelease supervision, probation, a community correctional services program or other authorized disposition or is discharged from custody by reason of the expiration of the term of imprisonment to which the person was sentenced, at which time the rights lost under subsection (a) shall automatically be restored.

~~(3)~~ (c) The ineligibilities imposed upon a convicted person by this section shall be in addition to such other penalties as may be provided by law. Restoration of the rights lost under

2-16

subsection (a) shall not relieve a convicted person of complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony.

(d) The provisions of this section apply to persons convicted of a felony on or after July 1, 1997.

Section 4. K.S.A. 1996 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage; or

(9) a violation of K.S.A. 21-3405b, and amendments thereto.

(c) There shall be no expungement of convictions for the following offenses or of

convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; or (12) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice

agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state; (C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery; (D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission; (E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto; (F) the petitioner's qualifications to be an employee of the state gaming agency; or (G) the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(I) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall seal and maintain such records but shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; or

(10) the Kansas sentencing commission; or

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact.

Section 5. K.S.A. 22-3722 is hereby amended to read as follows: 22-3722. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.

When an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the Kansas parole board that final release is not incompatible with the best interest of society and the welfare of the individual, the parole board may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. When an inmate has reached the end of the

postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring ~~all~~ the civil rights lost ~~by operation of law upon commitment~~ under the provisions of subsection (a) of K.S.A. 21-4615 and amendments thereto, and the ~~certification~~ certificate of discharge shall so state. The certificate of discharge shall also state that such certificate does not relieve the inmate of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

Section 6. K.S.A. 43-158 is hereby amended to read as follows: 43-158. The following persons shall be excused from jury service: (a) Persons unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out a jury questionnaire form prepared by the commissioner;

(b) persons ~~under adjudication of incompetency~~ adjudicated as a disabled person, as defined in K.S.A. 59-3002 and amendments thereto;

(c) persons who ~~within ten (10) years immediately preceding~~ have been convicted of or pleaded guilty, or nolo contendere, to an indictment or information charging a felony, unless such person has been finally discharged from supervision for such felony conviction or has been discharged from custody by reason of the expiration of the term of imprisonment to which the person was sentenced for such felony conviction

Section 7. K.S.A. 22-3722 and 43-158 and K.S.A. 1996 Supp. 21-4603d, 21-4611, 21-4615 and 21-4619 are hereby repealed.

Section 8. This act shall take effect and be in force from and after its publication in the statute book.

As Amended by House Committee

Session of 1995

HOUSE BILL No. 2213

By Committee on Judiciary

1-27

AN ACT concerning the administrative procedure act; creating an office of administrative hearings within the department of administration; amending K.S.A. 77-514, 77-516, 77-518, 77-525, 77-526, 77-527, 77-528, 77-530 and 77-532 and K.S.A. 1994 Supp. 77-529 and repealing the existing sections.

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

New Section 1. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration.

(b) The office shall employ administrative law judges as necessary to conduct proceedings required by the Kansas administrative procedure act or other provision of law. Only a person admitted to practice law in this state or a jurisdiction in the United States may be employed as an administrative law judge.

(c) If the office cannot furnish one of its administrative law judges in response to an agency request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the office.

(d) The director may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act.

(e) The department of administration may adopt rules and regulations:

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

(2) to establish procedures for agencies to request and for the director to assign administrative law judges. An agency may neither select nor reject any individual administrative law judge for any proceeding except in accordance with the Kansas administrative procedure act;

, court reporters and other support personnel

The office shall also conduct adjudicative proceedings of the department of social and rehabilitation services and the department of health and environment which are not under the administrative procedure act when requested by such agencies.

The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

in a proceeding listed in section 4 and amendments thereto

or not listed in section 4 and amendments thereto

On or before July 1, 1998,

shall

(3) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern administrative law judges;

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

(5) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may:

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

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

(g) The department of administration shall adopt rules and regulations to establish fees to charge a state agency for the cost of using an administrative law judge.

(h) Effective July 1, 1995, any attorney employed at that time as a full-time hearing officer by any state agency with a governor-appointed secretary subject to confirmation by the senate, except the ~~state corporation commission, commissioner of insurance~~ division of motor vehicles, division of workers compensation, Kansas human rights commission or director of taxation, shall be transferred to the department of administration. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state, and such person's services shall be deemed to have been continuous.

New Sec. 2. (a) There is hereby created a state advisory council for administrative hearings. The advisory council shall consist of seven members appointed by the governor. All members of the council shall serve at the pleasure of the governor. Members of the council shall not receive compensation or expense allowances for serving on the council.

(b) The council shall meet on call of the secretary of administration.

(c) The advisory council shall advise the secretary of administration and the director of the office of administrative hearings on policy matters affecting the office of administrative hearings and on rules and regulations adopted by the director.

Sec. 3. K.S.A. 77-514 is hereby amended to read as follows: 77-514. (a) ~~The ageney head or one or more other persons designated by the ageney head may be the presiding offieer.~~ *Except* the division of motor vehicles, division of workers compensation, Kansas human rights commission, director of taxation or *as otherwise provided by law, state agencies, except the corporation commission, ~~insurance commissioner and director of taxation~~* with a governor-appointed secretary subject to confirmation by the senate, *shall be required to use an administrative law judge assigned by the office of administrative hearing as a presiding*

may

Effective January 1, 1998, personnel in the administrative hearings section of the department of social and rehabilitation services, personnel in the administrative appeals section of the department of health and environment and the administrative law judges for the human rights commission and the division of taxation, and support personnel for such administrative law judges, shall be transferred to the office of administrative hearings.

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

K.S.A. 1995 Supp. 77-514 is hereby amended to read as follows: 77-514 (a) The agency head or, one or more members of the agency head, an administrative law judge assigned by the office of administrati hearings, or, unless prohibited by section 4 and amendments thereto, 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 perso preside or promptly upon discovering establishing grounds for disqualification, whichever is later.

2-23

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.~~

Sec. 4. K.S.A. 77-516 is hereby amended to read as follows: 77-516. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted:

(a) The state agency, *if not required to use an administrative law judge as the presiding officer,* may assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by K.S.A. 77-514 and amendments thereto concerning the selection of a presiding officer for a hearing.

(b) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(c) The notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing address and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the prehearing conference;

(5) a statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(6) the name, official title, mailing address and telephone number of

(d) A person whose disqualification is requested shall determine whether to grant th 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) If the office of administrative hearings cannot provide a presiding officer, A state agency may enter into agreements with another state agency to provide hearing presiding officers to conduct proceedings under this act ~~or for other agency proceedings~~.

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

New Sec. 4. (a) In the following proceedings, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge assigned by the office of administrative hearings:

(1) Hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340, and amendments thereto;

(2) hearings of the human rights commission under K.S.A. 44-1005, amendments thereto;

the presiding officer for the prehearing conference;

(7) a statement that at the prehearing conference the proceeding, without further notice, may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by this act; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding may be held in default under this act.

(d) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

Sec. 5. K.S.A. 77-518 is hereby amended to read as follows: 77-518. (a) The ~~state agency~~ *presiding officer for the hearing* shall set the time and place of the hearing and give reasonable written notice at least 10 days prior to the hearing to all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with K.S.A. 77-531, and amendments thereto.

(b) The notice shall include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it, the notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing address and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the hearing;

(5) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(6) the name, official title, mailing address and telephone number of the presiding officer;

(7) a statement of the issues involved and, to the extent known to the presiding officer, of the matters asserted by the parties; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding may be held in default under this act.

(d) The notice may include any other matters the presiding officer considers desirable to expedite the proceedings.

(e) The state agency shall cause notice to be given to persons entitled to notice under any provision of law who have not been given notice under subsection (a) *by the presiding officer*. Notice under this subsection shall be given in the manner specified by such provision of law or, if no such

(3) hearings of the department of health and environment under K.S.A. 36-502, 36-503, 36-504, 36-505, 36-508, 36-510, 36-513, 36-515b, 39-931, 39-947, 39-964, 39-965, 39-1807, 48-1608, 65-163, 65-163a, 65-164, 65-165, 65-170d, 65-171d, 65-171p, 65-171s, 65-187, 65-1,109a, 65-421, 65-430, 65-464, 65-504, 65-514, 65-521, 65-526, 65-5a09, 65-666, 65-669a, 65-673, 65-3008b, 65-3011, 65-3012, 65-3013, 65-3018, 65-3412, 65-3419, 65-3424*l*, 65-3440, 65-3446, 65-3456a, 65-3458, 65-3483, 65-3488, 65-3490, 65-34,106, 65-34,111, 65-34,113, 65-34,122, 65-34,148, 65-4507, 65-4508, 65-4927, 65-4958, 65-5107, 65-5108, 65-5310, 65-5314, 65-5911, 65-6509, 80-2027, 82a-1209, 82a-1210, and 82a-1216; and

(4) hearings of the division of taxation of the department of revenue under 55-508, 79-911, 79-911a, 79-1575, 79-3226, 79-3229, 79-3309, 79-3313, 79-3383, 79-3407, 79-3420, 79-3495, 79-3496, 79-34,113, 79-34,121, 79-3610, and 79-5205.

(b) This section shall be part of and supplemental to the Kansas administrative procedure act.

manner is specified, in a manner to be determined by the agency. If a person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof that the notice has been given. Notice under this subsection may include all types of information provided in subsections (a) through (d) or may consist of a brief statement indicating the subject matter, parties, time, place and nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied and name and telephone number of the presiding officer.

Sec. 6. K.S.A. 77-525 is hereby amended to read as follows: 77-525. (a) A presiding officer serving in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with any party or participant, with any person who has a direct or indirect interest in the outcome of the proceeding or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of presiding officers may communicate with other members of the panel regarding a matter pending before the panel, and any presiding officer may receive aid from staff assistants if the assistants do not:

(1) Receive *ex parte* communications of a type that the presiding officer would be prohibited from receiving; or

(2) furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of *ex parte* matters specifically authorized by statute, no party to an adjudicative proceeding, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the proceeding, may directly or indirectly communicate in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as presiding officer unless notice and an opportunity are given all parties to participate in the communication.

(d) If, before serving as presiding officer in an adjudicative proceeding, a person receives an *ex parte* communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) A presiding officer who receives an *ex parte* communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications and a memorandum stating the substance of all oral communications received, all responses made and the identity of each person from whom the presiding officer received an *ex parte* communication and

2-26

Delete Section 6.

shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the *ex parte* communication must be allowed to do so, upon requesting the opportunity for rebuttal within 10 days after notice of the communication.

(f) If necessary to eliminate the effect of an *ex parte* communication received in violation of this section, a presiding officer who receives the communication may be disqualified and the portions of the record pertaining to the communication may be sealed by protective order.

(g) The *presiding officer and* state agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each state agency, by rule and regulation, may provide for appropriate sanctions, including default, for any violations of this section.

(h) This section shall not apply to adjudicative proceedings before:

(1) The state corporation commission. Such proceedings shall be subject to the provisions of K.S.A. 77-545, *and amendments thereto*;

(2) the commissioner of insurance concerning any rate, or any rule, regulation or practice pertaining to the rates over which the commissioner has jurisdiction or adjudicative proceedings held pursuant to the Kansas insurance holding companies act. Such proceedings shall be subject to the provisions of K.S.A. 77-546, *and amendments thereto*; and

(3) the director of taxation. Such proceedings shall be subject to the provisions of K.S.A. 77-548, *and amendments thereto.*

Sec. 7. K.S.A. 77-526 is hereby amended to read as follows: 77-526. (a) ~~If the presiding officer is the agency~~ head *Except as provided further*, the presiding officer shall render a final order.

(b) If the presiding officer is not the agency head *or an administrative law judge as provided in section 1*, 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.

(d) Findings of fact shall be based exclusively upon the evidence of

Delete Section 7.

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.

(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.

Sec. 8. K.S.A. 77-527 is hereby amended to read as follows: 77-527. (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,

Sec. 6. K.S.A. 1995 Supp. 77-527 is hereby amended to read as follows: 77-527. (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 subjec 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 state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section 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.

2-29

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) The provisions of this section shall apply only to state agencies who are not required to use administrative law judges as provided by law.

Sec. 9. K.S.A. 77-528 is hereby amended to read as follows: 77-528. A party may submit to the presiding officer or agency head, *if applicable,* a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head, *if applicable,* may take action on the petition for stay, either before or after the effective date of the initial or final order.

Sec. 10. K.S.A. 1994 Supp. 77-529 is hereby amended to read as follows: 77-529. (a) Any party, within 15 days after service of a final order,

Delete Sections 9. and 10.

may file a petition for reconsideration with the ~~agency head~~ *presiding officer*, 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) The ~~agency head~~ *presiding officer* 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. The petition may be granted, in whole or in part, only if the ~~agency head~~ *presiding officer* 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~~ *presiding officer* does not dispose of it within 20 days after the filing of the petition.

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

Sec. 11. K.S.A. 77-530 is hereby amended to read as follows: 77-530. (a) Unless a later date is stated in a final order or a stay is granted, a final order is effective upon service.

(b) Unless a later date is stated in an initial order or a stay is granted, an initial order shall become effective and shall become the final order: (1) When the initial order is served, if administrative review is unavailable; (2) when the ~~agency head~~ *presiding officer* serves an order stating, after a petition for review has been filed, that review will not be exercised; or (3) 30 days after service if no party has filed a petition for review by the ~~agency head~~ *presiding officer*, the ~~agency head~~ *presiding officer* has not given written notice of its intention to exercise review and review by the ~~agency head~~ *presiding officer* is not otherwise required by law.

(c) This section does not preclude a state agency from taking immediate action to protect the public interest in accordance with K.S.A. 77-536, and amendments thereto.

Sec. 12. K.S.A. 77-532 is hereby amended to read as follows: 77-532. (a) A ~~state agency~~ *presiding officer* shall maintain an official record of each formal hearing.

(b) The ~~state agency~~ *presiding officer* record consists only of:

(1) Notices of all proceedings;

(2) any prehearing order;

(3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(4) evidence received or considered;

2-31

Delete Sections 11. and 12.

(5) a statement of matters officially noticed;
(6) proffers of proof and objections and rulings thereon;
(7) proposed findings, requested orders and exceptions;
(8) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
(9) any final order, initial order, or order on reconsideration; and
(10) staff memoranda or data submitted to the presiding officer.

(c) Except to the extent that this act or another statute provides otherwise, the ~~state agency~~ *presiding officer* record, excluding matters under paragraph (10) of subsection (b), constitutes the exclusive basis for state agency action in formal hearings and for judicial review thereof.

Sec. 13. K.S.A. 77-514, 77-516, 77-518, 77-525, 77-526, 77-527, 77-528, 77-530 and 77-532 and K.S.A. 1994 Supp. 77-529 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

65-163a, 65-164, 65-165, 65-3483, 65-3488, 65-3496, 75-3306

Insert attached §§ 7 through 17

and 79-3313 and K.S.A. 1995 Supp. 44-1005, 65-163, 65-526, 77-514 and 77-527

January 1, 1998 and

18

19.

2-32

Sec. 7. K.S.A. 1995 Supp. 44-1005 is hereby amended to read as follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice, and who can articulate a prima facie case pursuant to a recognized legal theory of discrimination, may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing, articulating the prima facie case, which shall also 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.

(b) The commission upon its own initiative 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, the attorney general 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.

(c) Whenever any problem of discrimination because of race, religion, color, sex, disability, national origin or ancestry arises, or whenever the commission has, in its own judgment, reason to believe that any person 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. 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.

(d) After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall, within seven 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 the commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, such commissioner, within 10 business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination.

(e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the 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 complainant, respondent and commission shall have 45 days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement signed by all

parties in interest. The parties may amend a conciliation agreement at any time prior to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

(f) In case of failure to eliminate such practices by conference and conciliation, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, the commissioner or the commission shall commence a hearing in accordance with the provisions of the Kansas administrative procedure act naming as parties the complainant and the person, employer, labor organization, employment agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent. A copy of the complaint shall be served on the respondent. At least four commissioners~~, a staff hearing examiner or a contract hearing examiner~~ or an administrative law judge from the office of administrative hearings shall be designated as the presiding officer. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.

(g) The complainant or respondent may apply to the presiding officer 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 presiding officer shall issue such subpoena.

(h) The case in support of the complaint shall be presented before the presiding officer 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. Any endeavors at conciliation shall not be received in evidence.

(i) Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission on or after July 1, 1996, may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Complaints filed with the commission before July 1, 1996, shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto. The provisions of this section shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015 et seq. and amendments thereto.

(j) 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. The presiding officer or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend such respondent's answer. The presiding officer 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.

(k) If the presiding officer finds a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the presiding officer shall render 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 presiding officer, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. Such order may also include an award of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of $2,000.

(l) 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.

(m) If the presiding officer finds that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discriminatory practice, the presiding officer shall render an order dismissing the complaint as to such respondent.

(n) The commission shall review an initial order rendered under subsection (k) or (m). In addition to the parties, a copy of any final order shall be served on the attorney general and such other public officers as the commission may deem proper.

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

Sec. 8. K.S.A. 1995 Supp. 65-163 is hereby amended to read as follows: 65-163. (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by

a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply system permit obtained in a manner similar to that prescribed by this section from the secretary.

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

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

(2) Whenver an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution, facilities collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary.

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

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

(3) The secretary shall adopt uniform and comprehensive rules and regulations for the location, design and operation of such basins. Such rules and regulations shall require permit applications by the public water suppliers for such basins to include a copy of the plans and specifications for the location and construction of each basin, the means of conveyance of the treatment residues to such basins, the content of treatment residues, the proposed method of basin operation and closure, the method of any anticipated expansion and any other data and information required by the secretary.

(4) Whenever complaint is made to the secretary by the mayor of any city of the state, by a local health officer or by a county or joint board of health, or whenever an investigation is

undertaken at the initiative of the secretary, relating to any alleged violation of the provisions of the permit for placement or storage of municipal water treatment residues in such basins, the public water supply system operator shall furnish all information the secretary requires. If the secretary finds that there is any violation of the terms of the permit, that the means of placement and storage exceed the terms of the permit or that any other condition exists by reason of the means of placement and storage that may be detrimental to the health of any inhabitants of the state or to the environment, the secretary shall have the authority to issue an order amending the permit or otherwise requiring the operator to perform remedial measures to curtail or prevent such detrimental conditions.

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

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

(f) There is hereby created an advisory committee to make recommendations regarding fees to be adopted by the secretary under subsection (e) and to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c and amendments thereto. Such advisory committee shall consist of one member appointed by the secretary to represent the department of health and environment, one member appointed by the director of the Kansas water office to represent such office and two members appointed by the secretary as follows: One from three nominations submitted by the Kansas section of the American waterworks association, and one from three nominations submitted by the Kansas rural water association. Members of the advisory committee shall serve without compensation or reimbursement of expenses.

Sec. 9. K.S.A. 65-163a is hereby ameded to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead the contamination of the public water supply system and may continue to refuse the delivery of water to the premises until the condition remedied.

(b) The secretary may order a supplier water: (1) To cease the delivery of water through pipes and mains to a premise or premises where a condition exists which might lead to the contamination of the public water supply system; or (2) to cease an activity which would result in a violation of the state primary drinking water standards; or (3) to cease an activities which results in a continuing violation of the state primary drinking water standards; or to comply with any combination of these orders. The supplier of water shall immediately comply with an order issued by the secretary under this section.

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

Sec. 10. K.S.A. 65-164 is hereby amended to read as follows: 65-164. (a) No person, company, corporation, institution or municipality shall place or permit to be placed discharge or permit to flow into any of the waters of the state any sewage, except as hereinafter provided. This act shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality sewerage company, if such sewer system was in operation and was discharging sewage to the waters of the state on March 20, 1907, but this exception shall not permit the discharge of sewage from any sewer system that has been extended subsequent to such date, nor shall it permit the discharge of any sewage which, upon investigation by the secretary of health and environment as hereinafter provided, is found to be polluting the waters of the state in a manner prejudicial to the health of the inhabitants thereof.

(b) For the purposes of this act, "sewage" means any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing or other forms of industry.

(c) Whenever a complaint is made to the secretary of health and environment by the mayor of any city of the state, by a local health officer or by a county or joint board of health, complaining of the pollution or of the polluted condition of any of the waters of the state situated within the county within which the city, local health officer or county or joint board of health is located, it shall be the duty of the secretary of health and environment to cause an investigation of the pollution or the polluted condition complained of. Also, whenever the secretary of health and environment otherwise has reason to believe that any of the waters of the state are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary may initiate an investigation of such pollution.

(d) Whenever an investigation is undertaken by the secretary of health and environment, under subsection (c), it shall be the duty of any person, company, corporation, institution or municipality concerned in such pollution to furnish, on demand, to the secretary of health and environment such information as required relative to the amount and character of the polluting material discharged into the waters by such person, company, corporation, institution or municipality. If the secretary of health and environment finds that any of the waters of the state have been or are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary of health and environment shall have the authority to make an order requiring: (1) Such pollution to cease within a reasonable time; (2) requiring such manner of treatment or of disposition of the sewage or other polluting material as, in the secretary's judgment, is necessary to prevent the future pollution of such waters; or (3) both. It shall be the duty of the person, company, corporation, institution or municipality to whom such order is directed to fully comply with the order of the secretary of health and environment.

(e) Orders of the secretary under subsection (d), and hearings thereon, are subject to the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to subsection (d) is subject to review in accordance with the act for judicial review and civil

enforcement of agency actions. The court on review shall hear the case without delay.

Sec. 11. K.S.A. 65-165 is hereby amended to read as follows: 65-165. (a) Upon application made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county or legally constituted sewer district, any person, company, corporation, institution, municipality or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, or the extension of a sewer system and whenever it is the secretary's opinion that the general interests of the public health would served thereby, or that the discharge of such sewage would not detract from the quality the waters of the state for their beneficial us for domestic or public water supply, agricultural needs, industrial needs, recreation needs or other beneficial use and that such discharge meets or will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and amendments thereto as effect on January 1, 1989, the secretary health and environment shall issue a permit for the extension of a sewer system or for the discharge of sewage, or both, and shall stipulate in the permit the conditions on which such discharge will be permitted and shall require such treatment of the sewage as determined necessary to protect beneficial uses the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and may require treatment of the sewage accordance with rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

(b) If, in the opinion of the secretary health and environment, issuance of gene permits is more appropriate than issuance individual permits, the secretary may establishment by rule and regulation, procedures for issuance of general permits to the following sources a facilities if such sources and facilities involve similar types of operations, discharge the same types of wastes or engage in the same types of sludge use or disposal practices, require similar monitoring requirements or require same effluent limitations, operating conditions, or standards for sewage sludge use or disposal: (1) A category of point and nonpoint sources of sewage such as storm water; (2) other categories of point and nonpoint sources of sewage; or (3) categories of facilities treating domestic sewage. Availability of general permits shall be limited to areas defined by geographical or political boundaries such as, but not limited to, city, county or state boundaries, state or county roads and highways or natural boundaries such as drainage basins. The secretary may establish, by rule and regulation, procedures for the issuance, revocation modification and change, reissuance or termination of general permits in the manner provided by law.

(c) Every permit for the discharge of sewage shall be revocable, or subject to modification, and change, by the secretary of health and environment, upon notice having been served on the public authorities having, by law, the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed two years; if the length of time

is not specified in the permit, it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary of health and environment, he right to discharge sewage into any of the waters of the state shall cease and terminate, and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided.

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

Sec. 12. K.S.A. 1995 Supp. 65-526 is hereby amended to read as follows: 65-526. The secretary of health and environment, in addition to any other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory of the provisions thereof or supplemental thereto, may assess a civil fine, after proper notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against a licensee or registrant for a violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. A civil fine assessed under this section shall not exceed $500. All fines assessed and collected under this section shall be remitted promptly to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund.

Sec. 13. K.S.A. 65-3483 is hereby amended to read as follows: 65-3483. (a) If, within 150 days after receipt of an application, the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife and parks of the proposed facility.

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

(c) Within 10 days after the secretary has determined that such application should be approved, the secretary shall: (1) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed facility. Such hearing shall be in the county in which the proposed facility will be located. Additional hearings may be held at such other places as the secretary deems suitable. At such hearing or hearings, the applicant may present testimony in favor of the application. Any person may appear or be represented by counsel to present testimony in support of or opposition to the application. The public notice shall:

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

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

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

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

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

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

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

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

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

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

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

(6) the nature of the probable environmental impact including the specification of the predictable adverse effects on the following: (A) The natural environment and ecology; (B) public health and safety; (C) scenic, historic, cultural and recreational value; and (D) water and air quality and wildlife.

(g) The secretary also shall consider the concerns and objections submitted by the public. The secretary shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the proposed site and operation at that site. The secretary, to the fullest extent practicable, shall integrate by stipulation the provisions of the local ordinances, permits or requirements.

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

(i) The public hearing required under subsection (c) shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 14. K.S.A. 65-3488 is hereby amended to read as follows: 65-3488. (a) Permits for PCB disposal facilities shall be issued for fixed terms not to exceed 10 years.

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

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

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

administrative procedure act.

Sec. 15. K.S.A. 65-3490 is hereby amended to read as follows: 65-3490. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed $10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of ~~receipt~~ service of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause~~, and shall give not less than 10 days' written notice of the time and place of the hearing. Within 30 days after such hearing and receipt of briefs or oral arguments, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, the secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance of formal rules of evidence or pleading at any hearing before the secretary or director~~. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.

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

Sec. 16. K.S.A. 75-3306 is hereby amended to read as follows: 75-3306. (a) The secretary of social and rehabilitation services, except as set forth in the Kansas administrative procedure act and subsections (f), (g), (h) and (i), shall provide a fair hearing for any person who is an applicant, client, inmate, other interested person or taxpayer who appeals from the decision or final action of any agent or employee of the secretary. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. It shall be the duty of the secretary of social and rehabilitation services to have available in all intake offices, during all office hours, forms for filing complaints for hearings, and appeal forms with which to appeal from the decision of the agent or employee of the secretary. The forms shall be prescribed by the secretary of social and rehabilitation services and shall have printed on or as a part of them the basic procedure for hearings and appeals prescribed by state law and the secretary of social and rehabilitation services.

(b) The secretary of social and rehabilitation services shall have authority to investigate (1) any claims and vouchers and persons or businesses who provide services to the secretary of social and

2-42

rehabilitation services or to welfare recipients, (2) the eligibility of persons to receive assistance and (3) the eligibility of providers of services.

(c) The secretary of social and rehabilitation services shall have authority, when conducting investigations as provided for in this section, to issue subpoenas; compel the attendance of witnesses at the place designated in this state; compel the production of any records, books, papers or other documents considered necessary; administer oaths; take testimony; and render decisions. If a person refuses to comply with any subpoena issued under this section or to testify to any matter regarding which the person may lawfully be questioned, the district court of any county, on application of the secretary, may issue an order requiring the person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt of court. Unless incapacitated, the person placing a claim or defending a privilege before the secretary shall appear in person or by authorized representative and may not be excused from answering questions and supplying information, except in accordance with the person's constitutional rights and lawful privileges.

(d) The presiding officer may close any portion of a hearing conducted under the Kansas administrative procedure act when matters made confidential, pursuant to federal or state law or regulation are under consideration.

(e) Except as provided in subsection (d) of K.S.A. 77-511 and amendments thereto and notwithstanding the other provisions of the Kansas administrative procedure act, the secretary may enforce any order prior to the disposition of a person's application for an adjudicative proceeding unless prohibited from such action by federal or state statute, regulation or court order.

(f) Decisions relating to the administration of the support enforcement program set forth in K.S.A. 39-753 et seq. and amendments thereto except for federal debt set-off activities shall be exempt from the provisions of the Kansas administrative procedure act and subsection (a).

(g) Decisions relating to administrative disqualification hearings shall be exempt from the provisions of the Kansas administrative procedure act and subsection (a).

(h) The department of social and rehabilitation services shall not have jurisdiction to determine the facial validity of a state or federal statute. ~~The administrative hearings section of the department of social and rehabilitation services~~ An administrative law judge from the office of administrative hearings shall not have jurisdiction to determine the facial validity of an agency rule and regulation.

(i) The department of social and rehabilitation services shall not be required to provide a hearing if: (1) The department of social and rehabilitation services lacks jurisdiction of the subject matter; (2) resolution of the matter does not require the department of social and rehabilitation services to issue an order that determines the applicant's legal rights, duties, privileges, immunities or other legal interests; (3) the matter was not timely submitted to the department of social and rehabilitation services pursuant to regulation or other provision of law; or (4) the matter was not submitted in a form substantially complying with any applicable provision of law.

Sec. 17. K.S.A. 79-3313 is hereby amended to read as follows: 79-3313. All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes

provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read. Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act ~~in the office of the director at Topeka~~. If upon the basis of such hearing it appears to the satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

Proposed Amendment to K.S.A. 17-4911

17-4911. Tax obligations of corporation and transfer agents. This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state. For purposes of the lien imposed by K.S.A. 79-1569, and amendments thereto, however, a transfer made under the provisions of this act shall be deemed to have been made in accordance with law, and a corporation or transfer agent need not require that a fiduciary furnish a consent to transfer as proof of release of the lien prior to the completion of a transfer made under the provisions of this act.

21-4603d. Authorized dispositions, crimes committed on or after July 1, 1993. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of probation or community corrections placement;

(4) assign the defendant to a community correctional services program in presumptive nonprison cases or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed 180 days as a condition of probation followed by a 180-day period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program. If the defendant was classified in grid blocks 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court may impose a nonprison sanction on the condition that the offender complete the program at the Labette correctional conservation camp. Such a placement decision shall not be considered a departure and shall not be subject to appeal;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction. Such repayment of the amount of any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the law enforcement agency;

(9) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7) and (8); or

(10) suspend imposition of sentence in misdemeanor cases.

In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in the conservation camp and the defendant meets all of the conservation camp's placement criteria unless the court states on the record the reasons for not placing the defendant in the conservation camp.

The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(b) Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights.

(c) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office,

or impose any other civil penalty as a result of conviction of crime.

(d) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(e) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation or as a departure from the presumptive nonimprisonment grid block of either sentencing grid; and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes the 180-day conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to 180 days of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(f) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal the provisions of this section shall not apply.

History: L. 1992, ch. 239, 238; L. 1993, ch. 165, 1; L. 1994, ch. 348, 10; L. 1995, ch. 121, 1; L. 1995, ch. 257, 1; July 1.

#3

Western EXTRALITE Company

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

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CONTRACTOR LIEN LAW

PURPOSE OF THE PROPOSED BILL: TO EXTEND THE TIME FOR FILING CONTRACTOR LIENS IN KANSAS FROM THE CURRENT 3 MONTHS TO 6 MONTHS ON NONRESIDENTIAL CONSTRUCTION CONTRACTS. THIS WILL BENEFIT ALL PARTICIPANTS TO THE CONTRACT. THIS WILL RADICALLY REDUCE THE NUMBER OF CONTRACTOR LIENS FILED IN KANSAS.

House Judiciary
Attachment 3
1/15/97

SERVICE CENTERS

in Missouri

N. Kansas City
1124 Howell
N. Kansas City, MO 64116-4113

Lee's Summit
1020 S.E. Hamblen Road
Lee's Summit, MO 64081-2936

St. Joseph
1302 Frederick Avenue
St. Joseph, MO 64501-2006

Sedalia
1501 Thompson Boulevard
Sedalia, MO 65301-2246

Warrensburg
608 N. Ridgeview Drive
Warrensburg, MO 64093-9337

in Kansas

Lawrence
1811 West 31st Street
Lawrence, KS 66046-4339

Olathe
1708 E. 123rd Street
Olathe, KS 66061-5882

Manhattan
221 Colorado Street
Manhattan, KS 66502-6236

Topeka
4024 S. Topeka Boulevard
Topeka, KS 66609-1296

LIEN LAWS KANSAS AND MISSOURI

Nonresidential Property	* Time for Filing Lien KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months - must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor	3 months	6 months - must give 10 days notice before filing lien
Other - A supplier to a subcontractor of a subcontractor or a supplier to a supplier	No lien rights	No lien rights
Time for filing suit	1 year after filing lien	6 months after filing lien

* From date of last material delivered or labor performed.

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (913) 234-5696
FAX (913) 234-3813
Email: ksbar@ink.org

January 15, 1997

Hon. Tim Carmody
Chair, House Judiciary Committee
Statehouse
Topeka Kansas 66612

Dear Tim,

On behalf of the KBA, we'd like to request the following bill introductions as committee bills:

1. Amendments to KSA 60-245a regarding business records subpoena clarifications. KSA 60-245a is also part of the amendments to the big civil procedure bill in your committee and our bill could be considered at the same time.

2. A new Mortgage release by operation of law statute. We do this periodically for title standards purposes in order to release by operation of law any satisfied but formally unreleased mortgages that are very old and should have already been released. It is crafted along the lines of KSA 58-2333i but instead of reoffering a new amendment every four years or so we are trying a new approach that automatically releases all mortgages not refiled according to law if the mortgages are more than 32 years old.

3. Legislation concerning minority shareholder rights was requested by a special subcommittee of our Corporate Law section. I do not believe this legislation is intended to affect publicly-held corporations. Those corporations have few "majority" shareholders and are regulated by federal SEC law.

I have two more that I'm waiting on final clearances for. I'll submit them as soon as I have authority. KBA has several other probate bills but I'll get them introduced in the Senate Judiciary Committee to offset the set of probate bills I understand you have in your committee.

Enough copies of this letter and recommended bill drafts are available for all committee members. I will be available for answering initial questions, if there are any.

Best regards,

Ron Smith
General Counsel

House Judiciary
Attachment 4
1/15/97

Proposed KBA Corporation Section amendment on Minority Shareholders rights

Amendments to KSA 17-6516:

17-6516. Appointment of custodian or receiver for deadlocked corporation; powers of custodian.

(a) The district court, upon application of ~~any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for any corporation when~~ *one or more stockholders of a corporation organized under the laws of this state, may grant one or more forms of relief specified in subsection (c) when it is established that:*

(1) At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(2) The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(3) The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

(b) *The district court, upon application of one or more stockholders which individually or collectively owns of record at least 10% of the issued and outstanding shares of all classes of common stock taken as a whole of a corporation having 100 or fewer stockholders of record may grant, subject to KSA 17-6002(b)(8), and amendments thereto, one or more forms of relief specified in subsection (c) below when it is established that: (A) the directors or those in control of the corporation have acted or are acting in a manner that is illegal or fraudulent or constitutes breach of a fiduciary duty causing substantial injury to the corporation or the stockholders, or (B) material injury to the corporation has resulted from the misapplication or waste of a substantial portion of the corporate assets.*

(c) If one or more of the grounds for relief described in subsections (a) or (b) exist, the district court may order one or more of the following types of relief: (1) the appointment of one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation;

(2) the performance, prohibition, alteration, or setting aside of any action of the corporation or the prohibition or setting aside of any action of those in control of the corporation (whether such action is taken in their capacity as stockholder, director, officer or other otherwise);

(3) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(4) the removal from office of any director or officer;

(5) the appointment of any individual as director or officer;

(6) an accounting with respect to any matter in dispute;

(7) the payment of dividends;

(8) The aware of damages to any aggrieved party; or

(9) such other relief as the court may deem fair and equitable under the circumstances.

(d) A custodian appointed under this section shall have all the powers and title of a receiver appointed under K.S.A 17-6901, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the court shall otherwise order and except in cases arising under subsection (a)(3) of this section or subsection (a)(2) of KSA 17-7212. *Any officer or director appointed under this section shall have all the powers and duties specified in the articles of incorporation or bylaws of the corporation, as limited or further specified by order of the court.*

History: L. 1972, ch. 52, Sec. 69; July 1.

Proposal on Business Records subpoenas, KSA 60-245a
See New subsection (e), infra.

60-245a. Subpoena of records of a business not a party.

(a) As used in this section:

(1) "Business" means any kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(2) "Business records" means writings made by personnel or staff of a business, or persons acting under their control, which are memoranda or records of acts, conditions or events made in the regular course of business at or about the time of the act, condition or event recorded.

(b) A subpoena duces tecum which commands the production of business records in an action in which the business is not a party shall inform the person to whom it is directed that the person may serve upon the attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within 10 days after the service of the subpoena or at or before the time for compliance, if the time is less than 10 days after service. If such objection is made, the business records need not be produced except pursuant to an order of the court upon motion with notice to the person to whom the subpoena was directed.

Unless the personal attendance of a custodian of the business records and the production of original business records are required under subsection (d), it is sufficient compliance with a subpoena of business records if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described in the subpoena and mails a copy of the affidavit accompanying the records to the party or attorney requesting them within 10 days after receipt of the subpoena.

The records described in the subpoena shall be accompanied by the affidavit of a custodian of the records, stating in substance each of the following: (1) The affiant is a duly authorized custodian of the records and has authority to certify records; (2) the copy is a true copy of all the records described in the subpoena; and (3) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

If the business has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit and shall send only those records of which the affiant has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of the subpoena are clearly inscribed. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

The reasonable costs of copying the records may be demanded of the party causing the subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(c) The subpoena shall be accompanied by an affidavit to be used by the records custodian. The subpoena and affidavit shall be in substantially the following form:

Subpoena of Business Records
State of Kansas
County of _____

(1) You are commanded to produce the records listed below before _____ (Officer at Deposition) (Judge of the District Court) at _____ (Address) in the City of _____, County of _____, on the _____ day of _____, 19__ at _____ o'clock __m., and to testify on behalf of the _____ in an action now pending between _____, plaintiff, and _____, defendant. Failure to comply with this subpoena may be deemed a contempt of the court.

(2) Records to be produced:

_____
_____
_____
_____

(3) You may make written objection to the production of any or all of the records listed above by serving such written objection upon _____ at _____ (Attorney) (Attorney's Address) (within 10 days after service of this subpoena) (on or before _____, 19__). If such objection is made, the records need not be produced except upon order of the court.

(4) Instead of appearing at the time and place listed above, it is sufficient compliance with this subpoena if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described above and mails a copy of the affidavit below to _____ at _____ (Requesting Party or Attorney) Address of Party or Attorney) within 10 days after receipt of this subpoena.

(5) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of this subpoena are clearly inscribed. If return of the copy is desired, the words return requested must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

(6) The records described in this subpoena shall be accompanied by the affidavit of a custodian of the records, a form for which is attached to this subpoena.

(7) If the business has none of the records described in this subpoena, or only part thereof, the affidavit shall so state, and the custodian shall send only those records of which the custodian has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

(8) The reasonable costs of copying the records may be demanded of the party causing this subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(9) The copy of the records will not be returned unless requested by the witness.

_____
Clerk of the District Court
[Seal of the District Court]

Dated _____, 19__.
Affidavit of Custodian of Business Records
State of _____
County of _____

I, _____, being first duly sworn, on oath, depose and say that:

(1) I am a duly authorized custodian of the business records of _____ and have the authority to certify those records.

(2) The copy of the records attached to this affidavit is a true copy of the records described in the subpoena.

(3) The records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

_____
Signature of Custodian

Subscribed and sworn to before the undersigned on _____.

_____
Notary Public
My Appointment Expires:

_____

Certificate of Mailing

I hereby certify that on _____, 19__, I mailed a copy of the above affidavit to _____ at _____ (Requesting Party or Attorney) (Address of Party or Attorney) by depositing it with the United States Postal Service for delivery with postage prepaid.

_____
Signature of Custodian

Subscribed and sworn to before the undersigned on _____

_____
Notary Public

My Appointment Expires:

_____

(d) Any party may require the personal attendance of a custodian of business records and the production of original business records by causing a subpoena duces tecum to be issued which contains the following statements in lieu of paragraphs (4), (5), (6), (7) and (8) of the subpoena form described in subsection (c):

The personal attendance of a custodian of business records and the production of original records is required by this subpoena. The procedure for delivering copies of the records to the clerk of the court shall not be deemed sufficient compliance with this subpoena and should be disregarded. A custodian of the records must personally appear with the original records.

(e) Notice of the issuance of a subpoena pursuant to this section where the attendance of the custodian of the business records is not required shall be given to all parties to the action at least ten days prior to the issuance thereof. A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the event any party objects to the production of the documents sought by such subpoena prior to its issuance, the subpoena shall not be issued until further order of the court in which the action is pending.

(f) Upon receipt of business records the clerk of the court shall so notify the party who caused the subpoena for the business records to be issued. If receipt of the records makes the taking of a deposition unnecessary, the party shall cancel the deposition and shall notify the other parties to the action in writing of the receipt of the records and the cancellation of the deposition.

After the copy of the record is filed, a party desiring to inspect or copy it shall give reasonable notice to every other party to the action. The notice shall state the time and place of inspection. Records which are not introduced in evidence or required as part of the record shall be destroyed or returned to the custodian of the records who submitted them if return has been requested.

Mortgage Release Statute

New Section 1: (a) Any mortgage or deed of trust against real property located in this state recorded on or after January 1, 1955, and before January 1, 1965, or referred to or described in any instrument of record within such period shall be void, unless, prior to July 1, 1998, the owner and holder thereof files, in the office of the register of deeds of the county in which the property is located, an affidavit stating: (a) The name and address of the owner and holder thereof; (b) the nature of the claim; (c) the amount due on the claim; (d) the date of the last payment on the claim; and (e) a description of the property.

(b) Any mortgage or deed of trust against real property located in this state recorded on or after January 1, 1965, or referred to or described in any instrument of record after such date, shall be void by operation of law if

(1) more than thirty-two years shall have elapsed between the date of the initial recording of the mortgage, and

(2) prior to the first day of July of the year next preceding the date thirty-two years after the date of initial recording, the owner and holder of the mortgage does not file in the office of the register of deeds of the county in which the property is located, an affidavit stating:

(A) The name and address of the owner and holder thereof;

(B) the nature of the claim;

(C) the amount due on the claim;

(D) the date of the last payment on the claim; and

(E) a description of the property.

(c) This section shall not apply to or affect mortgages, deeds of trust or liens against real property of railroad corporations recorded after January 1, 1890. Infancy, incompetency or nonresidency shall not affect the operation of this act.