

Approved: 4/8/98 Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 23, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)  
Representative Powell (excused)  
Representative Mayans (excused)  
Representative Ruff (excused)  
Representative Krehbiel (excused)  
Representative Swenson (excused)  
Representative Wilk (excused)

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

Conferees appearing before the committee: Art Griggs, Department of Administration

Others attending: See attached list

Representative Carmody called the meeting to order.

**HB 2672-Secretary of aging orders, actions and proceedings subject to KAPA**

The Chair stated that **HB 2672** has no proponents or opponents and this bill was requested by the Joint Committee on Administrative Rules and Regulations. The Chair stated that a few years ago the legislature moved many of the functions out of SRS into the Department of Aging as far as the supervision of nursing homes. This bill would allow the Secretary of Aging's designee to conduct hearings. The statute currently states that the Secretary herself has to do those hearings which makes it the only agency in the state that calls for a Secretary of a department to personally conduct hearings. The Chair stated that the purpose of **HB 2672** is to cleanup a glitch in the statute transferring those procedures to the Department of Aging.

**SB 405-Changing the name of administrative law judges to presiding officers; allowing not requiring the office to employ court reporters**

The Chair stated that **SB 405** would change the name of administrative law judges to presiding officers. The Chair stated that this is a follow-up of **SB 140** passed last year.

Art Griggs, Department of Administration, testified in support of **SB 405**. The conferee discussed the background of the bill. The conferee stated that the civil service utilizes the term "presiding officer." The conferee stated that this bill changes the classification to avoid an inference that the administrative law judge classification must be used. The conferee referred to his written testimony outlining other changes provided in the bill. (Attachment 1) The conferee stated that **SB 405** contrasts sharply with the major policy changes associated with **HB 2604**. Conferee Griggs stated a copy of his written testimony on **HB 2604** was provided to the Committee. (Attachment 2) The conferee stated that **HB 2604** makes major changes by requiring the administrative hearings of over 40 state agencies under the Kansas Administrative Procedures Act to be conducted by a presiding officer from the Office of Administrative Hearings. The conferee stated that this major policy change should be further studied and the incorporation of **HB 2604** into **SB 405** might jeopardize **SB 405**'s prospects of being passed. The conferee discussed the balloon amendments for **HB 2604** offered by his agency.

The Chair closed the hearing on **SB 405**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 23, 1998.

**SB 536:**                    **Civil commitment: enacting the care and treatment act for persons with an alcohol or substance abuse problem**

Representative Presta opened discussion on **SB 536** and referred to the changes contained in balloon language. (Attachment3)

Representative Presta made a motion to adopt the balloon on **SB 536** with a technical amendment on page 38 and the insertion of language to include "qualified mental health professional-----" and other technical corrections. Representative Kirk seconded the motion. The motion carries.

Representative Shriver made a motion to recommend **SB 536** as amended for passage. Representative Haley seconded the motion. The motion carries.

The Chair opened discussion on **SB 405**, **HB 2672**, and **HB 2604**. Representative Garner referred to a balloon on **HB 2604** prepared by the Revisor. (Attachment4) Representative Garner stated that this balloon would apply to all the agencies dealt with in **HB 2604** except for the Workers Compensation Division, and the Employment Security Division of the Department of Human Resources.

Representative Garner made a motion to adopt the balloon into **SB 405**. The motion was seconded by Representative Klein. The motion carries.

The Chair stated that the effective date of the transfer would be July 1999 to give the Executive Branch at least a year to plan its budget appropriately and another session of the legislature to fine tune this if necessary.

The Chair offered a copy of **HB 2672** showing the substitution of the language "a presiding officer from the Office of Administrative Hearings" for the language "the secretary's designee." (Attachment5)

Representative Carmody made a motion to amend the provisions of **HB 2672** with the appropriate changes to make it compatible with the balloon language placed into **SB 405**. Representative Shriver seconded the motion. The motion carries.

Representative Carmody made a motion to redesignate **SB 405** as House Substitute for **SB 405**. Representative Mays seconded the motion. The motion carries.

Representative Mays made a motion to report **Substitute SB 405** favorably. Representative Adkins seconded the motion. The motion carries.

The Chair discussed the agenda plans for the committee and stated that there will not be a hearing on **HB 2897**, but there will be five other bills to be heard or discussed tomorrow.

The Chair adjourned the meeting at 4:10 p.m.  
The next meeting is scheduled for March 24, 1998.

HOUSE JUDICIARY COMMITTEE  
GUEST LIST

DATE: 3-23-98

NAME	REPRESENTING
R. M. Harold	KS Judicial Council
D. Ryan	" " "
KEITH R LANDIS	CHRISTIAN SCIENCE COMM. ON PUBLICATION FOR KS
Shayla Johnston	Kansas Trial Lawyers
Kathie Randall	Whitney Samson, S.A.
Ron Auck	Dept of Admin
Cleta M. Renyer	Right to Life of Ks.
Don Doestken	KDHR - legal services
Phil Harner	KDHR - Div. of Work. Comp.
Jan Maxwell	KDDA
Carol & Fran	SR5
Billie Stephens	KPOA / KSA
Jane Clark	KC DAA

#1

TESTIMONY BEFORE THE  
HOUSE JUDICIARY COMMITTEE

By  
Art Griggs, Department of Administration  
Concerning  
SB 405

I am appearing today to testify on behalf of the Department of Administration in support of SB 405, which will assist in a smooth transfer of the hearing functions of the Department of Social and Rehabilitation Services (SRS) to the new Office of Administrative Hearings within the Department of Administration.

With the passage of L. 1997, Ch. 182, §88 (now codified at K.S.A. 75-37,121), the SRS administrative hearings office will be transferred on July 1, 1998 to a newly created Office of Administrative Hearings within the Department of Administration. SRS and the Department of Administration have been working closely over the past six months to develop a plan for implementing, funding, and administering the new Office. During that process, we identified several changes to the authorizing statutes that would make that process more efficient. These changes have been incorporated in SB 405.

1. Use the term "presiding officer" in lieu of "administrative law judge" to avoid an inference that the administrative law judge classification must be used. *See Sections 1 through 4.*
2. Clarify that there is no requirement to hire court reporters for the Office of Administrative Hearings. *See subsection (b) of Section 2. (Line 12 of page 3).*
3. Permit persons directly supervised by an attorney to act as a presiding officer in order to provide flexibility in staffing routine, straightforward hearings. *See Section 2, subsection (b). (Line 19 of page 3).*
4. Eliminate requirement to adopt separate personnel regulations in order to avoid an unnecessary, parallel personnel system for presiding officers only. *See Section 2, subsection (e). (Lines 38-41 of page 3 and lines 8-10 of page 4).*
5. Provide permissive authority to adopt regulations in order to provide flexibility in adopting only those regulations that are found to be necessary to effectively implement the act. *See Section 2, subsection (e). (Lines 36-37 of page 3).*
6. Provide authority to establish fees charged to state agencies for these services without regulations, which is the way fees for other central services to state agencies are handled. *See Section 2, subsection (g). (Lines 17-18 of page 4.)*

SB 405, as amended by the Senate, fine-tunes the legislation enacted last year and

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Attachment 1

provides a flexible statutory framework within which the policy decision to create an Office of Administrative Hearings can be implemented.

This bill contrasts sharply with the major policy changes associated with HB 2604, which was previously heard by this Committee. It would require the administrative hearings of over 40 state agencies under the Kansas Administrative Procedures Act to be conducted by a presiding officer from the Office of Administrative Hearings unless the agency head (or one or more members of the agency head) acts as presiding officer.

It is the position of the Department of Administration that SB 405 should remain unchanged from the Senate version. Significant amendments to SB 405 (such as those in HB 2604) would not allow the Senate to have an opportunity to hold hearings or fully study and deliberate the major policy changes associated with such a major expansion of the Office of Administrative Hearings. Moreover, that approach may create sufficient opposition to jeopardize the enactment of SB 405, thereby complicating the implementation of last year's legislation. For these reasons, I encourage the Committee to pass SB 405 in its current form and to decline any requests to amend the substance of HB 2604, and its **major changes** on policy, into the "**fine tuning**" provisions of SB 405.

Thank you for this opportunity to speak in support of SB 405. I would be happy to stand for questions.

13550.03

2

TESTIMONY BEFORE THE  
HOUSE JUDICIARY COMMITTEE

By  
Art Griggs, Department of Administration  
Regarding HB 2604

January 29, 1998

I am appearing today to testify on behalf of the Department of Administration regarding HB 2604 and to support the bill with amendments that address some issues of concern to the Department of Administration.

With the passage of K.S.A. 75-37,121 last session, the Department of Social and Rehabilitation Services (SRS) administrative hearings office will be transferred on July 1, 1998, to a newly created Office of Administrative Hearings within the Department of Administration. HB 2604 would expand the scope of responsibilities for the Office of Administrative Hearings beyond SRS administrative hearings. K.S.A. 77-551, which is part of the Kansas Administrative Procedures Act (KAPA), would be amended, effective July 1, 1999, to provide that the presiding officer for all hearings that are subject to KAPA must be the agency head, one or more members of the agency head (if the agency head is a board or commission), or a presiding officer assigned by the Office of Administrative Hearings. This amendment would make the Office of Administrative Hearings responsible for conducting all hearings held under KAPA in which the agency head or one or two of its members did not personally act as presiding officer. In addition, the Office would be required to provide a presiding officer for non-KAPA hearings upon request of a state agency. Effective July 1, 1999, "personnel in the administrative hearings section of all agencies and support personnel for such presiding officers" would be transferred to the Office of Administrative Hearings.

In addition to the expansion of the Office of Administrative Hearings, HB 2604 makes a number of amendments to K.S.A. 75-37,121 that are also contained in SB 405, as amended by Senate Committee. The Department of Administration supported these changes in testimony regarding SB 405.

#### Implementation Issues

Number of Affected Agencies. Planning for the transfer of only the SRS hearing section has involved numerous issues and discussions over the last seven months, even though the transfer is a straightforward shift of an organizational unit as a whole and does not involve any physical relocation of staff. Effective July 1, 1999, HB 2604 would dramatically and rapidly expand the responsibilities of the new Office of Administrative Hearings to include approximately 40 state agencies that conduct KAPA hearings. Consequently, implementation of HB 2604 would be very complex, complicated, and time-consuming. Numerous issues would need to be identified and resolved, relating to staffing, location, facilities, funding, billing, docketing and prioritizing cases, developing and preserving the presiding officer's subject expertise, and staffing an expanded office. Currently, there are extensive gaps in information about the resources currently required to handle hearings in other agencies, which greatly hinders the Department's ability to develop reasonable assumptions about caseloads, staffing, needed facilities, and costs.

Ambiguities in Personnel Transfer Language. HB 2604 states that "personnel in the *administrative hearings section* of all agencies and support personnel for such presiding officers" would be transferred to the Office of Administrative Hearings (emphasis added.). However, a number of state agencies that are responsible for one or more KAPA hearings do not have an "administrative hearings section." Therefore, it appears that some agencies that hold KAPA hearings may not have any staff transferred to the Office of Administrative Hearings under HB 2604, thereby further complicating assessments of the effect of HB 2604 on the Department of Administration and other state agencies.

Office Consolidation. During FY 1999, the SRS administrative hearings section will continue to remain in its present office space and will not need additional facilities or equipment upon its transfer to the Department of Administration. However, HB 2604 creates a need to establish a consolidated office, relocate the transferred staff and make provisions for new positions. Consolidation would entail a number of new expenses, including moving costs; additional space rental charges; development of a compatible, unified information system, including new software and hardware; and purchase of any equipment or services currently shared with other programs in the transferring agencies. (HB 2604 does not address transfer of equipment, supplies, or funding.) However, the large number of affected agencies, as well as uncertainty about staffing requirements and the number of positions that would actually be transferred under HB 2604, would greatly complicate planning for creation of a single, unified office.

Billing and Funding. Because an entire organizational unit of SRS will be transferred to the Department of Administration at the beginning of FY 1999, the budgeting and funding for transfer of the SRS administrative hearings section is relatively straightforward. A budget for the administrative hearings unit was already developed and virtually all hearings conducted by the office during FY 1999 will be on behalf of SRS. However, under HB 2604 it would be necessary to develop a new system of funding and billing for presiding officers' services that takes into account such issues as complexity and length of hearings; location of the parties; and appropriate billing for cases that are dismissed, withdrawn, or settled prior to a formal hearing; projected caseloads; indirect costs; and cash flow requirements. This task is more complex because state agencies can still hold their own KAPA hearings if the state agency head (or a board member) acts as the presiding officer. Consequently, the number of cases or hearings assigned to the Office of Administrative Hearings will be up to the 40 agencies affected.

Establishing fees. We do not think the fees charged to state agencies by the Office should be set by regulation. K.S.A. 75-37,121 provides that the "department of administration may adopt rules and regulations to establish fees to charge a state agency" for the cost of using a presiding officer. However, as a provider of services to other state agencies, the Department of Administration sets numerous fees without adopting regulations, including motor pool rates, printing rates, personnel training class fees, health insurance premiums, building rental rates, leave assessment rates, self-insurance workers' compensation rates, telephone service rates, central data processing rates and other information system charges. In none of these instances, which involve fees charged to state agencies rather than private individuals or organizations, has there been any perceived need to set rates through regulations, which have the force and effect of law.

### **Proposed Amendments**

Given the number and complexity of implementation issues associated with HB 2604, any expansion of the duties of the Office of Administrative Hearings should be carried out only in smaller, manageable stages. Adequate data-gathering and planning should be completed in advance. Experience should be gained with SRS and a small number of other agencies in order to evaluate the effectiveness of this approach and identify any other matters that need to be considered before further expansion. Any expansion should be thoughtfully planned and implemented in order to avoid unnecessary disruptions and hardships for parties to hearings and the affected state agencies. Therefore, the Department of Administration is proposing the following amendments to HB 2604:

- a. Limited expansion. Require the Human Rights Commission and the Board of Pharmacy to use presiding officers of the Office of Administrative Hearings for any hearing not handled by the agency head or by one or more members of the agency head. This transfer would be effective July 1, 1999. By including the Human Rights Commission and the Board of Pharmacy, some experience could be gained with smaller agencies that do not have a staff of presiding officers. (See Section 30, page 33, line 30 and line 40; Section 30, page 34, line 10 and lines 37-38; Section 35, page 38, line 11 and lines 26-27; and Section 39, page 39, line 37.)

- b. Report to Legislature. Require the Secretary of Administration to submit a report to the Legislature on or before October 1, 1999 describing progress in consolidating the hearing functions of SRS, the Human Rights Commission, and the Board of Pharmacy and providing recommendations regarding any further expansion. (See Section 30, page 35, after line 6.)
- c. Non-KAPA Hearings. Clarify that, to the extent resources are available, the Office of Administrative Hearings may provide a presiding officer for both KAPA and non-KAPA hearings when requested by a state agency. (See Section 29, page 32, lines 6-8, line 16 and lines 24-25; Section 30, page 33, lines 31-34 and line 40; and Section 35, page 38, line 26-27.)
- d. Establishing Fees. Permit the Secretary of Administration to establish fees for the services of presiding officers without adopting regulations. (See Section 29, page 33, line 6-7; and Section 34, page 34, lines 20-21.) This amendment was included in SB 405 by the Senate Judiciary Committee.
- e. Technical Clean-up. Delete sections of HB 2604, as introduced, that relate to agencies other than the Human Rights Commission and the Board of Pharmacy. Make technical amendments relating to transfer of positions so that they coincide with the start of the first payroll period in the appropriate fiscal year. (See bill title for affected sections. See also Section 29, page 31, line 40; Section 29, page 33, line 9; Section 30, page 33, line 23; Section 30, page 34, line 23 and line 37; Section 38, page 39, line 25; Section 39, page 39, line 33; and Section 48, page 46, lines 19-20.)

Thank you for this opportunity to testify regarding HB 2604 and for your consideration of our proposed amendments to this bill. I would be happy to stand for questions.

13641.01



Session of 1998

HOUSE BILL No. 2604

By Special Committee on Judiciary

12-17

9 AN ACT concerning administrative procedure; concerning presiding of-  
 10 ficers; amending K.S.A. ~~2-1208a, 2-3311, 8-2426~~ 21-3110, ~~31-140, 36-~~  
 11 ~~509, 40-2,137, 44-322a, 49-606~~ 65-163a, ~~65-678, 65-720a, 65-747~~  
 12 65-753, 65-2305, 65-3483, 65-3488, 65-3490, ~~66-1,117~~ 75-37,121,  
 13 75-37,121, as amended by section 29 of this act, ~~75-6207, 76-3106, 76-~~  
 14 ~~3110~~ 77-514, as amended by section 92 of chapter 182 of the 1997  
 15 Session Laws of Kansas, 77-514, as amended by section 34 of this act,  
 16 ~~77-540, 77-550~~ 77-551, 77-551, as amended by section 38 of this act,  
 17 ~~79-3313, 82a-1405, 82a-1501a, 82a-1502, 82a-1503 and 82a-1504~~ and  
 18 K.S.A. 1997 Supp. 44-1005, 65-163, 65-525, 65-526, ~~74-4904, 74-8804,~~  
 19 ~~74-8816, 74-8817 and 74-8837~~ and repealing the existing sections; also  
 20 repealing K.S.A. 75-5611a.]  
 21

and

and

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

22 Section 1. On and after July 1, 1999, K.S.A. 2-1208a is hereby  
 23 amended to read as follows: 2-1208a. (a) If it shall appear to the secretary  
 24 or an authorized representative of the secretary from examination or anal-  
 25 ysis of an official sample of a commercial fertilizer that the commercial  
 26 fertilizer is falsely labeled or fails to comply with the provisions of this  
 27 act, the secretary shall cause notice to be given to the person in possession  
 28 of the commercial fertilizer and the registrant that a hearing in relation  
 29 thereto will be held at a date and place named in such notice. Whereupon  
 30 the secretary or an authorized representative of the secretary a presiding  
 31 officer from the office of administrative hearings shall hold a hearing in  
 32 accordance with the provisions of the Kansas administrative procedure  
 33 act.  
 34

35 (b) If it is established at the hearing to the satisfaction of the secre-  
 36 tary, or an authorized representative of the secretary a presiding officer  
 37 from the office of administrative hearings, that any commercial fertilizer  
 38 has been registered in error, or has been sold in violation of any of the  
 39 provisions of this act, or that any provision of this act has been violated,  
 40 the secretary shall have power to cancel the registration of such brand or  
 41 brands of commercial fertilizer, and may report the facts to the proper  
 42 prosecuting attorney and furnish that officer with an official report of the  
 43 record of such hearing and a copy of the result of any analysis or other

1 business or any person employed by such business within the racetrack  
 2 facility;

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

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

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

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

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

21 (e) The commission may suspend or revoke the racing or wagering  
 22 equipment or services license of any business for any reason which would  
 23 justify refusal to issue such a license. Proceedings to suspend or revoke  
 24 such license shall be conducted by the commission or its appointed hear-  
 25 ing officer a presiding officer from the office of administrative hearings  
 26 in accordance with the provisions of the Kansas administrative procedure  
 27 act.

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

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

39 Sec. 29. K.S.A. 75-37,121 is hereby amended to read as follows:  
 40 75-37,121. On and after July 1, 1998: (a) There is created the office of  
 41 administrative hearings within the department of administration, to be  
 42 headed by a director appointed by the secretary of administration. The  
 43 director shall be in the unclassified service under the Kansas civil service

[June 14

1 act.

2 (b) The office shall may employ administrative law judges presiding  
 3 officers, court reporters and other support personnel as necessary to con-  
 4 duct proceedings required by the Kansas administrative procedure act for  
 5 adjudicative proceedings of the department of social and rehabilitation  
 6 services. The office shall conduct adjudicative proceedings of the de-  
 7 partment of social and rehabilitation services which are not under the  
 8 Kansas administrative procedure act when requested by such agency.  
 9 Only a person admitted to practice law in this state or a person directly  
 10 supervised by a person admitted to practice law in this state may be  
 11 employed as an administrative law judge a presiding officer. The office  
 12 may employ regular part-time personnel. Persons employed by the office  
 13 shall be under the classified civil service.

To the extent a presiding officer is available,

may

any state agency

14 (c) If the office cannot furnish one of its administrative law judges  
 15 presiding officers in response to the department of social and rehabilita-  
 16 tion services request, the director shall designate in writing a full-time  
 17 employee of an agency other than the department of social and rehabil-  
 18 itation services to serve as administrative law judge presiding officer for  
 19 the proceeding, but only with the consent of the employing agency. The  
 20 designee must possess the same qualifications required of administrative  
 21 law judges presiding officers employed by the office.

to conduct proceedings required by the Kansas administrative procedures act

22 (d) The director may furnish administrative law judges presiding of-  
 23 ficers on a contract basis to any governmental entity to conduct any pro-  
 24 ceeding not subject to the Kansas administrative procedure act [or not  
 25 listed in K.S.A. 77-551 and amendments thereto].

26 (e) On or before January 1, 1990, The department secretary of ad-  
 27 ministration shall may adopt rules and regulations:

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

32 (2) To establish procedures for agencies to request and for the di-  
 33 rector to assign administrative law judges presiding officers. The depart-  
 34 ment of social and rehabilitation services may neither select nor reject  
 35 any individual administrative law judge presiding officer for any proceed-  
 36 ing except in accordance with the Kansas administrative procedure act;

37 (3) (2) to establish procedures and adopt forms, consistent with the  
 38 Kansas administrative procedure act, the model rules of procedure, and  
 39 other provisions of law, to govern administrative law judges presiding  
 40 officers; and

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

43 (5) (3) to facilitate the performance of the responsibilities conferred

1 upon the office by the Kansas administrative procedure act.

2 (f) The director may:

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

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

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

[ June 14

9 (h) Effective ~~[July 1,]~~ 1998, personnel in the administrative hearings  
10 section of the department of social and rehabilitation services and support  
11 personnel for such ~~administrative law judges presiding officers,~~ shall be  
12 transferred to *and shall become employees of* the office of administrative  
13 hearings. Such personnel shall retain all rights under the state personnel  
14 system and retirement benefits under the laws of this state, and ~~such~~  
15 ~~which had accrued to or vested in such personnel prior to the effective~~  
16 ~~date of this section. Such person's services shall be deemed to have been~~  
17 ~~continuous. All transfers of personnel positions in the classified service~~  
18 ~~under the Kansas civil service act shall be in accordance with civil service~~  
19 ~~laws and any rules and regulations adopted thereunder. This act shall not~~  
20 ~~affect any matter pending before an administrative hearing officer at the~~  
21 ~~time of the effective date of the transfer, and such matter shall proceed~~  
22 ~~as though no transfer of employment had occurred.~~

[ June 13

23 Sec. 30. On and after ~~[July 1,]~~ 1999, K.S.A. 75-37,121, as amended by  
24 section 29 of this act, is hereby amended to read as follows: 75-37,121.  
25 On and after July 1, 1998: (a) There is created the office of administrative  
26 hearings within the department of administration, to be headed by a di-  
27 rector appointed by the secretary of administration.

[ The director shall be in the unclassified service  
under the Kansas civil service act.

28 (b) The office may employ presiding officers, court reporters and  
29 other support personnel as necessary to conduct proceedings required by  
30 the Kansas administrative procedure act ~~for adjudicative proceedings of~~  
31 ~~the department of social and rehabilitation services. The office shall con-~~  
32 ~~duct adjudicative proceedings of the department of social and rehabili-~~  
33 ~~tation services any state agency [which are not under the Kansas admin-~~  
34 ~~istrative procedure act] when requested by such agency. Only a person~~  
35 ~~admitted to practice law in this state or a person directly supervised by a~~  
36 ~~person admitted to practice law in this state may be employed as a pre-~~  
37 ~~siding officer. The office may employ regular part-time personnel. Per-~~  
38 ~~sons employed by the office shall be under the classified civil service.~~

[ for adjudicative proceedings of the department  
of social and rehabilitation services, the human  
rights commission, and the board of pharmacy

[ To the extent a presiding officer is available,

[ may

39 (c) ~~If the office cannot furnish one of its presiding officers in response~~  
40 ~~to the department of social and rehabilitation services [an agency] request,~~  
41 ~~the director shall designate in writing a full-time employee of an agency~~  
42 ~~other than the department of social and rehabilitation services requesting~~  
43 ~~agency to serve as presiding officer for the proceeding, but only with the~~

[ a

[ of the department of social and rehabilitation services,  
the human rights commission, or the board of pharmacy  
to conduct proceedings required by the Kansas administrative  
procedures act

2-8

1 consent of the employing agency. The designee must possess the same  
2 qualifications required of presiding officers employed by the office.

3 (d) The director may furnish presiding officers on a contract basis to  
4 any governmental entity to conduct any proceeding not subject to the  
5 Kansas administrative procedure act or not listed in K.S.A. 77-551 and  
6 amendments thereto.

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

8 (1) To establish procedures for agencies to request and for the di-  
9 rector to assign presiding officers. ~~The department of social and rehab-~~  
10 ~~ilitation services [An agency] may neither select nor reject any individual~~  
11 ~~presiding officer for any proceeding except in accordance with the Kansas~~  
12 ~~administrative procedure act;~~

[The department of social and rehabilitation services, the human rights commission, and the board of pharmacy

13 (2) to establish procedures and adopt forms, consistent with the Kan-  
14 sas administrative procedure act, the model rules of procedure, and other  
15 provisions of law, to govern presiding officers; and

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

18 (f) The director may implement the provisions of this section and  
19 rules and regulations adopted under its authority.

20 (g) The secretary of administration may ~~adopt rules and regulations~~  
21 ~~to~~ establish fees to charge a state agency for the cost of using a presiding  
22 officer.

23 (h) Effective ~~[July 1]~~ 1998, personnel in the administrative hearings  
24 section of the department of social and rehabilitation services and support  
25 personnel for such presiding officers, shall be transferred to and shall  
26 become employees of the office of administrative hearings. Such person-  
27 nel shall retain all rights under the state personnel system and retirement  
28 benefits under the laws of this state which had accrued to or vested in  
29 such personnel prior to the effective date of this section. Such person's  
30 services shall be deemed to have been continuous. All transfers of per-  
31 sonnel positions in the classified service under the Kansas civil service act  
32 shall be in accordance with civil service laws and any rules and regulations  
33 adopted thereunder. This act shall not affect any matter pending before  
34 an administrative hearing officer at the time of the effective date of the  
35 transfer, and such matter shall proceed as though no transfer of employ-  
36 ment had occurred.

[June 14

37 (i) Effective ~~[July 1]~~ 1999, ~~personnel in the administrative hearings~~  
38 ~~section of [all agencies and support personnel for such presiding officers]~~  
39 ~~shall be transferred to and shall become employees of the office of admin-~~  
40 ~~istrative hearings. Such personnel shall retain all rights under the state~~  
41 ~~personnel system and retirement benefits under the laws of this state~~  
42 ~~which had accrued to or vested in such personnel prior to the effective~~  
43 ~~date of this section. Such person's services shall be deemed to have been~~

[June 13

any presiding officer and all support

the human rights commission and the board of pharmacy

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

7 **Sec. 31.** On and after July 1, 1999, K.S.A. 75-6207 is hereby  
 8 amended to read as follows: 75-6207. (a) If the director receives a timely  
 9 written request for a hearing under K.S.A. 75-6206 and amendments  
 10 thereto, the director shall request the secretary of administration to ap-  
 11 point a presiding officer from the office of administrative hearings who  
 12 shall hold a hearing in accordance with the provisions of the Kansas ad-  
 13 ministrative procedure act to determine whether the debt claim is valid.  
 14 Subject to the provisions of subsection (b), the presiding officer shall  
 15 determine whether the claimed sum asserted as due and owing is correct,  
 16 and if not, shall order an adjustment to the debt claim which shall be  
 17 forwarded to the director and to the state agency, foreign state agency or  
 18 municipality to which the debt is owed. No issue may be considered at  
 19 the hearing which has been previously litigated and no collateral attack  
 20 on any judgment shall be permitted at the hearing. The order of the  
 21 presiding officer shall inform the debtor of the amount determined as  
 22 due, if any, and that setoff procedures have been ordered to proceed in  
 23 accordance with this act. If the setoff is to be made against earnings of  
 24 the debtor, the order shall include a statement that the setoff may be  
 25 postponed in accordance with K.S.A. 75-6208 and amendments thereto.  
 26 Orders under this section shall not be subject to administrative review.

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

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

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

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

(j) On or before October 1, 1999, the secretary of administration shall submit a report to the legislature describing progress in implementing this section and providing recommendations regarding any further expansion of agencies that are subject to K.S.A. 77-551, and amendments thereto.

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

6 Sec. 35. On and after July 1, 1999, K.S.A. 77-514, as amended by  
7 section 34 of this act, is hereby amended to read as follows: 77-514. (a)  
8 The agency head, one or more members of the agency head or a presiding  
9 officer assigned by the office of administrative hearings; ~~or, unless pro-~~  
10 ~~hibited by K.S.A. 77-551, and amendments thereto, one or more other~~  
11 ~~persons designated by the agency head may shall be the presiding officer.~~

[ or, unless prohibited by K.S.A. 77-551, and amendments thereto, one  
or more other persons designated by the agency head

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

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

19 (d) A person whose disqualification is requested shall determine  
20 whether to grant the petition, stating facts and reasons for the determi-  
21 nation.

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

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

[ Except for those agencies identified in K.S.A. 77-551, and  
amendments thereto, any

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

35 Sec. 36. On and after July 1, 1999, K.S.A. 77-549 is hereby amended  
36 to read as follows: 77-549. (a) The filing of a return with the director of  
37 taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of  
38 the Kansas Statutes Annotated, and amendments thereto, shall not be  
39 deemed an application for an order under the Kansas administrative pro-  
40 cedure act.

41 (b) A determination by the division of taxation or the audit services  
42 bureau of the department of revenue concerning tax liability under article  
43 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes

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1 Annotated, and amendments thereto, which is made prior to the oppor-  
2 tunity for a hearing or prior to the opportunity for an informal conference  
3 before the secretary or the secretary's designee on such tax liability, shall  
4 not require an adjudicative proceeding under the Kansas administrative  
5 procedure act.

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

10 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,  
11 and amendments thereto, shall be rendered in writing and served within  
12 120 days after conclusion of the hearing or after submission of proposed  
13 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-  
14 ments thereto, unless this period is waived or extended with the written  
15 consent of all parties or for good cause shown. If extended for good cause,  
16 such good cause shall be set forth in writing on or before the expiration  
17 of the 120 days.

18 Sec. 37. On and after July 1, 1999, K.S.A. 77-550 is hereby amended  
19 to read as follows: 77-550. For purposes of administrative proceedings of  
20 the division of property valuation under the Kansas administrative pro-  
21 cedure act, the secretary of revenue may designate the director of the  
22 division of property valuation or ~~other designee~~ a *presiding officer from*  
23 *the office of administrative hearings* as agency head.

24 Sec. 38. ~~K.S.A. 77-551 is hereby amended to read as follows: 77-551.~~

[ June 14

25 On and after ~~July 1,~~ 1998: (a) In hearings of the department of social and  
26 rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,  
27 75-3306 and 75-3340, and amendments thereto, the presiding officer shall  
28 be the agency head, one or more members of the agency head or an  
29 ~~administrative law judge~~ a *presiding officer* assigned by the office of ad-  
30 ministrative hearings.

31 (b) This section shall be part of and supplemental to the Kansas ad-  
32 ministrative procedure act.

[ June 13

33 Sec. 39. On and after ~~July 1,~~ 1999, K.S.A. 77-551, as amended by  
34 section 38 of this act, is hereby amended to read as follows: 77-551. On  
35 and after July 1, 1998: (a) In ~~all~~ *hearings of the department of social and*  
36 ~~rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,~~  
37 ~~75-3306 and 75-3340, and amendments thereto, [any state agency] that~~

[ the department of social and rehabilitation services, the human  
rights commission, or the board of pharmacy

38 ~~are required to be conducted in accordance with the provisions of the~~  
39 *Kansas administrative procedure act*, the presiding officer shall be the  
40 agency head, one or more members of the agency head or a presiding  
41 officer assigned by the office of administrative hearings.

42 (b) This section shall be part of and supplemental to the Kansas ad-  
43 ministrative procedure act.



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

4 (d) The record of any hearing or other proceeding held pursuant to  
5 this act shall be maintained and make available for public examination in  
6 the office of the chief engineer.

7 Sec. 46. K.S.A. 75-37,121, 77-514, as amended by section 92 of chap-  
8 ter 182 of the 1997 Session Laws of Kansas, and 77-551 are hereby re-  
9 pealed.

10 Sec. 47. On and after July 1, 1999, K.S.A. 2-1208a, 2-3311, 8-2426,  
11 21-3110, 31-140, 36-509, 40-2,137, 44-322a, 49-606, 65-163a, 65-673, 65-  
12 720a, 65-747, 65-753, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117,  
13 75-37,121, as amended by section 29 of this act, 75-5611a, 75-6207, 76-  
14 3106, 76-3110, 77-514, as amended by section 34 of this act, 77-549,  
15 77-550, 77-551, as amended by section 38 of this act, 79-3313, 82a-1405,  
16 82a-1501a, 82a-1502, 82a-1503, and 82a-1504 and K.S.A. 1997 Supp. 44-  
17 1005, 65-163, 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and  
18 74-8837 are hereby repealed.

19 Sec. 48. This act shall take effect and be in force from and after its  
20 publication in the ~~statute book~~.

[ June 14, 1998 and

[ Kansas register

3  
on of 1998

3/23/98

SENATE BILL No. 536

SB 536—Am.

- 1 ately detained or continue to be detained;
- 2 (2) the place where the petitioner requests that the person be de-
- 3 tained or continue to be detained;
- 4 (3) if applicable, because detention is requested in a treatment facility
- 5 other than a state psychiatric hospital, a statement that the facility is will-
- 6 ing to accept and detain such person; and
- 7 (4) if applicable, because admission to a state psychiatric hospital is
- 8 sought, the necessary statement from a qualified mental health profes-
- 9 sional authorizing admission and emergency care and treatment.
- 10 (e) The petition may include a request that a temporary custody order
- 11 be issued pursuant to K.S.A. 1997 Supp. 59-2959 and amendments
- 12 thereto.

13 Sec. 44. K.S.A. 1997 Supp. 59-2958 is hereby amended to read as  
 14 follows: 59-2958. (a) At the time the petition for the determination of  
 15 ~~mental illness of a~~ *whether a person is a mentally ill* person subject to \_\_\_\_\_ for care and treatment  
 16 involuntary commitment ~~for care and treatment~~ *under this act* is filed, or  
 17 any time thereafter prior to the trial upon the petition as provided for in  
 18 K.S.A. 1997 Supp. 59-2965 and amendments thereto, the petitioner may  
 19 request in writing that the district court issue an ex parte emergency order  
 20 including either or both of the following: (1) An order directing any law  
 21 enforcement officer to take the person named in the order into custody  
 22 and transport the person to a designated treatment facility or other suit-  
 23 able place willing to receive and detain the person; (2) an order author-  
 24 izing any named treatment facility or other place to detain or continue to  
 25 detain the person until the further order of the court or until the ex parte  
 26 emergency custody order shall expire.

27 (b) No ex parte emergency custody order shall provide for the de-  
 28 tention of any person at a state psychiatric hospital unless a written state-  
 29 ment from a qualified mental health professional authorizing such ad-  
 30 mission and detention at a state psychiatric hospital has been filed with  
 31 the court.

32 (c) No ex parte emergency custody order shall provide for the deten-  
 33 tion of any person in a nonmedical facility used for the detention of per-  
 34 sons charged with or convicted of a crime.

35 (d) If no other suitable facility at which such person may be detained  
 36 is willing to accept the person, then the participating mental health center  
 37 for that area shall provide a suitable place to detain the person until the  
 38 further order of the court or until the ex parte emergency custody order  
 39 shall expire.

40 (e) An ex parte emergency custody order issued under this section  
 41 shall expire at 5:00 p.m. of the second day the district court is open for  
 42 the transaction of business after the date of its issuance, which expiration  
 43 date shall be stated in the order.

House Judiciary  
3-23-98  
Attachment 3

1 (f) The district court shall not issue successive ex parte emergency  
2 custody orders.

3 (g) In lieu of issuing an ex parte emergency custody order, the court  
4 may allow the person with respect to whom the request was made to  
5 remain at liberty, subject to such conditions as the court may impose.

6 Sec. 45. K.S.A. 1997 Supp. 59-2961 is hereby amended to read as  
7 follows: 59-2961. (a) The order for a mental evaluation required by sub-  
8 section (a)(5) of K.S.A. 1997 Supp. 59-2960 and amendments thereto,  
9 shall be served in the manner provided for in subsections (c) and (d) of  
10 K.S.A. 1997 Supp. 59-2963 and amendments thereto. It shall order the  
11 proposed patient to submit to a mental evaluation ~~to be conducted by a~~  
12 ~~physician or psychologist~~ and to undergo such other evaluation as may  
13 be designated ~~physical or other evaluations as may be ordered~~ by  
14 the court in the order, except that any proposed patient who is not subject  
15 to a temporary custody order issued pursuant to K.S.A. 1997 Supp. 59-  
16 2959 and amendments thereto and who requests a hearing pursuant to  
17 K.S.A. 1997 Supp. 59-2962 and amendments thereto, need not submit to  
18 such evaluation ~~evaluations~~ until that hearing has been held and the court  
19 finds that there is probable cause to believe that the proposed patient is  
20 a mentally ill person subject to involuntary commitment for care and  
21 treatment under this act. The evaluation may be conducted at a treatment  
22 facility, the home of the proposed patient or any other suitable place that  
23 the court determines is not likely to have a harmful effect on the welfare  
24 of the proposed patient. A state psychiatric hospital shall not be ordered  
25 to evaluate any proposed patient, unless a written statement from a qual-  
26 ified mental health professional authorizing such an evaluation at a state  
27 psychiatric hospital has been filed with the court.

28 (b) At the time designated by the court in the order, but in no event  
29 later than ~~3~~ *three* days prior to the date of the ~~hearing trial~~ provided for  
30 in K.S.A. 1997 Supp. 59-2965 and amendments thereto, the examiner  
31 shall submit to the court a report, in writing, of the evaluation which  
32 report also shall be made available to counsel for the parties at least ~~3~~  
33 *three* days prior to ~~such hearing the trial~~. The report also shall be made  
34 available to the proposed patient and to whomever the patient directs,  
35 unless for good cause recited in the order, the court orders otherwise.  
36 Such report shall state that the examiner has made an examination of the  
37 proposed patient and shall state the opinion of the examiner on the issue  
38 of whether or not the proposed patient is a mentally ill person subject to  
39 involuntary commitment for care and treatment under the act and the  
40 examiner's opinion as to the least restrictive treatment alternative which  
41 will protect the proposed patient and others and allow for the improve-  
42 ment of the proposed patient if treatment is ordered.

43 Sec. 46. K.S.A. 1997 Supp. 59-2963 is hereby amended to read as

, psychologist or qualified  
mental health professional  
otherwise authorized by  
law to diagnose mental  
disorders

**59-2972. Transfer by secretary of social and rehabilitation services.** [See Revisor's Note]

(a) ~~Except as provided in subsection (c),~~ the secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the best interests of the patient. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the hospital to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.

← T

(b) ~~Except as provided in subsection (c),~~ the secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for the mentally retarded whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided for in this subsection shall remain subject to the same statutory provisions as were applicable at the psychiatric hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the retardation institution to which the patient has been transferred. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the institution to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No patient shall be transferred from a state psychiatric hospital to a state institution for the mentally retarded unless the superintendent of the receiving institution has found, pursuant to K.S.A. 76-12b01 through 76-12b11 and amendments thereto, that the patient is mentally retarded and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the sec-

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retary of social and rehabilitation services or the designee of the secretary from allowing a patient at a state psychiatric hospital to be admitted as a voluntary resident to a state institution for the mentally retarded, or from then discharging such person from the state psychiatric hospital pursuant to K.S.A. 1997 Supp. 59-2973 and amendments thereto, as may be appropriate.

~~(c) At all times, any person admitted to or detained at a state psychiatric hospital upon an application made pursuant to K.S.A. 1997 Supp. 50-2054, and amendments thereto, or an order issued pursuant to K.S.A. 1997 Supp. 50-2058, 50-2059, 50-2064, 50-2066 or 50-2069, and amendments thereto, and who is alleged to be or who has been determined to be a mentally ill person subject to involuntary commitment for care and treatment, as defined in subsection (f)(1)(B) of K.S.A. 1997 Supp. 50-2046, and amendments thereto, shall be kept in a separate secure facility or building and segregated at all times from any other patient alleged to be or who has been determined to be a mentally ill person subject to involuntary commitment for care and treatment, as defined in subsection (f)(1)(A) of K.S.A. 1997 Supp. 50-2046, and amendments thereto. The provisions of this subsection (c) shall be effective on the date of the issuance by the United States supreme court of an opinion in the case of *State of Kansas vs. LeRoy Hendricks*, case no. 95-1649, which holds the sexually violent predator act, K.S.A. 50-20a01 et seq., unconstitutional and shall expire on June 30, 1998.~~

**History:** L. 1996, ch. 167, § 28; L. 1997, ch. 152, § 11; May 8.

**Revisor's Note:**

The effective date of the amendments to this section by L. 1997, ch. 152, § 11 (see subsection (c)) was contingent on the United States Supreme Court declaring the sexually violent predator act, 59-29a01 et seq., unconstitutional. The court upheld that act in the case of *State of Kansas vs. LeRoy Hendricks*, 65 U.S.L.W. 4564.

#34

Suggested amendments  
March 6, 1998

Session of 1998

# HOUSE BILL No. 2604

By Special Committee on Judiciary

12-17

House Judiciary  
3-23-98  
Attachment 4

9 AN ACT concerning administrative procedure; concerning presiding of-  
10 ficers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-  
11 509, 40-2,137, 44-322a, 49-606, 65-163a, 65-673, 65-720a, 65-747,  
12 65-753, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117, 75-37,121,  
13 75-37,121, as amended by section 29 of this act, 75-6207, 76-3106, 76-  
14 3110, 77-514, as amended by section 92 of chapter 182 of the 1997  
15 Session Laws of Kansas, 77-514, as amended by section 34 of this act,  
16 77-549, 77-550, 77-551, 77-551, as amended by section 38 of this act,  
17 79-3313, 82a-1405, 82a-1501a, 82a-1502, 82a-1503 and 82a-1504 and  
18 K.S.A. 1997 Supp. 44-1005, 65-163, 65-525, 65-526, 74-4904, 74-8804,  
19 74-8816, 74-8817 and 74-8837 and repealing the existing sections; also  
20 repealing K.S.A. 75-5611a.

21  
22 *Be it enacted by the Legislature of the State of Kansas:*

23 Section 1. On and after July 1, 1999, K.S.A. 2-1208a is hereby  
24 amended to read as follows: 2-1208a. (a) If it shall appear to the secretary  
25 or an authorized representative of the secretary from examination or anal-  
26 ysis of an official sample of a commercial fertilizer that the commercial  
27 fertilizer is falsely labeled or fails to comply with the provisions of this  
28 act, the secretary shall cause notice to be given to the person in possession  
29 of the commercial fertilizer and the registrant that a hearing in relation  
30 thereto will be held at a date and place named in such notice. Whereupon  
31 the secretary or ~~an authorized representative of the secretary~~ *a presiding*  
32 *officer from the office of administrative hearings* shall hold a hearing in  
33 accordance with the provisions of the Kansas administrative procedure  
34 act.

35 (b) If it is established at the hearing to the satisfaction of the secre-  
36 tary, or ~~an authorized representative of the secretary~~ *a presiding officer*  
37 *from the office of administrative hearings*, that any commercial fertilizer  
38 has been registered in error, or has been sold in violation of any of the  
39 provisions of this act, or that any provision of this act has been violated,  
40 the secretary shall have power to cancel the registration of such brand or  
41 brands of commercial fertilizer, and may report the facts to the proper  
42 prosecuting attorney and furnish that officer with an official report of the  
43 record of such hearing and a copy of the result of any analysis or other

1 examination which may have a bearing on the case. Prosecution may be  
2 instituted under the provisions of this act in the district court of the county  
3 where the offense is alleged to have been committed, upon complaint of  
4 the secretary or an authorized representative of the secretary or any cit-  
5 izen of this state, or by any county attorney and shall be prosecuted by  
6 the county attorney in the name of the state of Kansas.

7 Sec. 2. On and after July 1, 1999, K.S.A. 2-3311 is hereby amended  
8 to read as follows: 2-3311. Before any chemigation user registration or  
9 chemigation user's permit shall be revoked, denied renewal or before it  
10 shall be suspended for any cause, the secretary shall conduct a hearing in  
11 accordance with the provisions of the Kansas administrative procedure  
12 act. The notice of hearing shall be sent to the registrant or permit holder  
13 at least 15 days prior to the hearing date and shall be served upon the  
14 registrant or permit holder by letter sent to such person's address as  
15 shown by the records of the secretary, setting out the time and place of  
16 the hearing and alleged grounds for revocation or suspension. The reg-  
17 istrant or permit holder shall have the right to appear in person and by  
18 counsel and to testify and introduce evidence. If such person fails to  
19 appear, the matter may be heard in such person's absence. Any such  
20 hearing may be conducted by the secretary or ~~by a hearing officer duly~~  
21 ~~appointed by the secretary~~ *a presiding officer from the office of admin-*  
22 *istrative hearings.*

23 Sec. 3. On and after July 1, 1999, K.S.A. 8-2426 is hereby amended  
24 to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments  
25 thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any  
26 person violating any provision thereof shall be subject to civil penalty of  
27 not less than \$350 and not to exceed \$1,000, as determined by the director  
28 of vehicles or a ~~person appointed by the director~~ *presiding officer from*  
29 *the office of administrative hearings* after notice and hearing in accord-  
30 ance with the provisions of the Kansas administrative procedure act. The  
31 provisions of this section shall not affect the authority of the secretary of  
32 revenue or any officer of the department of revenue in enforcing any  
33 provision of the vehicle dealers and manufacturers licensing act, of which  
34 K.S.A. 8-2425 and amendments thereto and this section shall be a part.

35 Sec. 4. On and after July 1, 1999, K.S.A. 21-3110 is hereby amended  
36 to read as follows: 21-3110. The following definitions shall apply when  
37 the words and phrases defined are used in this code, except when a par-  
38 ticular context clearly requires a different meaning.

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

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

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

1 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
2 guilty.

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

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

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

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

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

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

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

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

25 (10) "Law enforcement officer" means any person who by virtue of  
26 such person's office or public employment is vested by law with a duty  
27 to maintain public order or to make arrests for crimes, whether that duty  
28 extends to all crimes or is limited to specific crimes or any officer of the  
29 Kansas department of corrections or for the purposes of K.S.A. 21-3409,  
30 21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amend-  
31 ments thereto, any employee of the Kansas department of corrections.

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

34 (12) "Obtains or exerts control" over property includes but is not  
35 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
36 of title to, interest in, or possession of property.

37 (13) "Owner" means a person who has any interest in property.

38 (14) "Person" means an individual, public or private corporation, gov-  
39 ernment, partnership, or unincorporated association.

40 (15) "Personal property" means goods, chattels, effects, evidences of  
41 rights in action and all written instruments by which any pecuniary obli-  
42 gation, or any right or title to property real or personal, shall be created,  
43 acknowledged, assigned, transferred, increased, defeated, discharged, or



1 dismissed.

2 (16) "Property" means anything of value, tangible or intangible, real  
3 or personal.

4 (17) "Prosecution" means all legal proceedings by which a person's  
5 liability for a crime is determined.

6 (18) "Public employee" is a person employed by or acting for the  
7 state or by or for a county, municipality or other subdivision or govern-  
8 mental instrumentality of the state for the purpose of exercising their  
9 respective powers and performing their respective duties, and who is not  
10 a "public officer."

11 (19) "Public officer" includes the following, whether elected or ap-  
12 pointed:

13 (a) An executive or administrative officer of the state, or a county,  
14 municipality or other subdivision or governmental instrumentality of or  
15 within the state.

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

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

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

24 (e) A law enforcement officer.

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

27 (20) "Real property" or "real estate" means every estate, interest, and  
28 right in lands, tenements and hereditaments.

29 (21) "Solicit" or "solicitation" means to command, authorize, urge,  
30 incite, request, or advise another to commit a crime.

31 (22) "State" or "this state" means the state of Kansas and all land and  
32 water in respect to which the state of Kansas has either exclusive or con-  
33 current jurisdiction, and the air space above such land and water. "Other  
34 state" means any state or territory of the United States, the District of  
35 Columbia and the Commonwealth of Puerto Rico.

36 (23) "Stolen property" means property over which control has been  
37 obtained by theft.

38 (24) "Threat" means a communicated intent to inflict physical or  
39 other harm on any person or on property.

40 (25) "Written instrument" means any paper, document or other in-  
41 strument containing written or printed matter or the equivalent thereof,  
42 used for purposes of reciting, embodying, conveying or recording infor-  
43 mation, and any money, token, stamp, seal, badge, trademark, or other

1 evidence or symbol of value, right, privilege or identification, which is  
2 capable of being used to the advantage or disadvantage of some person.

3 Sec. 5. On and after July 1, 1999, K.S.A. 31-140 is hereby amended  
4 to read as follows: 31-140. Any person aggrieved by any order or ruling  
5 issued pursuant to the provisions of this act may appeal such order or  
6 ruling to the state fire marshal within 15 days from the date of the service  
7 of such order by filing a notice of such appeal in the office of the state  
8 fire marshal. The state fire marshal or ~~the state fire marshal's authorized~~  
9 *representative a presiding officer from the office of administrative hear-*  
10 *ings* shall hear such person within 30 days after the receipt of such notice  
11 of appeal, and the hearing shall be held in accordance with the provisions  
12 of the Kansas administrative procedure act. The state fire marshal shall  
13 file a decision thereon and, unless by authority of the state fire marshal  
14 the order is revoked or modified, the order shall be complied with within  
15 the time fixed in such decision.

16 Sec. 6. On and after July 1, 1999, K.S.A. 36-509 is hereby amended  
17 to read as follows: 36-509. (a) Whenever a timely request for a hearing  
18 shall be filed with the secretary pursuant to the provisions of this act the  
19 secretary shall set a time and place for such hearing which shall be held  
20 within not to exceed 20 days of the request therefor. Upon such hearing,  
21 the secretary or ~~a person designated by the secretary as a hearing officer~~  
22 *presiding officer from the office of administrative hearings* may issue sub-  
23 poenas for the attendance of witnesses and the production of relevant  
24 books and papers. At the hearing, the applicant shall have the right to be  
25 represented by counsel, to present witnesses and evidence in own behalf  
26 and to cross-examine adverse witnesses.

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

32 Sec. 7. On and after July 1, 1999, K.S.A. 40-2,137 is hereby amended  
33 to read as follows: 40-2,137. (a) The costs incurred by the department of  
34 insurance in conducting any administrative hearing authorized by article  
35 33 of chapter 40 of the Kansas Statutes Annotated and subsection (c) of  
36 K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A. 40-939, K.S.A. 40-  
37 940, subsections (g) and (h) of K.S.A. 40-1113, subsection (a) of K.S.A.  
38 40-1114 and K.S.A. 40-1120, and amendments thereto, shall be assessed  
39 against insurers or rating organizations that are parties to the hearing in  
40 ~~the~~ proportion as the commissioner of insurance may determine upon  
41 consideration of all relevant circumstances including: (1) The nature of  
42 the hearing; (2) whether the hearing was instigated by, or for the benefit  
43 of a particular party or parties; (3) whether there is a successful party on

1 the merits of the proceeding; (4) the relative levels of participation by the  
2 parties; and (5) with the exception of hearings held under article 33 of  
3 chapter 40 of the Kansas Statutes Annotated, only when the disapproval  
4 of rates in question is upheld, a rating organization's license is suspended  
5 or revoked or a penalty is imposed as a result of the hearing.

6 (b) For purposes of this section costs incurred shall mean the ~~hearing~~  
7 *presiding officer fees, cost of making a record and publishing notices, and*  
8 *travel expenses of department of insurance officers and employees, but*  
9 *costs incurred shall not include ~~hearing~~ ~~presiding officer fees~~ or cost of*  
10 *making a record unless the department has retained the services of ~~in-~~*  
11 *dependent contractors the office of administrative hearings or outside*  
12 *experts to perform such functions.*

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

23 Sec. 8. On and after July 1, 1999, K.S.A. 44-322a is hereby amended  
24 to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under  
25 K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the  
26 secretary of human resources, the secretary or the secretary's authorized  
27 representative shall investigate the claim as provided in K.S.A. 44-322  
28 and amendments thereto to determine if a dispute exists between the  
29 parties to the claim. If the secretary or the secretary's authorized repre-  
30 sentative determines that a dispute does exist and that the parties are  
31 unable to resolve their differences, the secretary or ~~the secretary's au-~~  
32 ~~thorized representative~~ *a presiding officer from the office of administra-*  
33 *tive hearings shall establish a time and place for a hearing on the matter.*  
34 The hearing shall be conducted in accordance with the provisions of the  
35 Kansas administrative procedure act.

36 (b) Upon the completion of the hearing, the presiding officer shall  
37 determine whether the claim for unpaid wages is a valid claim under  
38 K.S.A. 44-313 through 44-326, and amendments thereto. If the presiding  
39 officer determines the claim for unpaid wages is valid, the amount of  
40 unpaid wages owed together with any damages which may be assessed  
41 under K.S.A. 44-315 and amendments thereto, if applicable, also shall be  
42 determined by the presiding officer. If the presiding officer determines  
43 the claim for unpaid wages is valid, the presiding officer shall order that

1 the unpaid wages and any applicable damages be paid by the party re-  
2 sponsible for their payment. Any initial order under this section shall be  
3 reviewed by the secretary ~~or the secretary's authorized representative~~ in  
4 accordance with K.S.A. 77-527 and amendments thereto. The decision of  
5 the secretary ~~or the secretary's authorized representative~~ shall be final  
6 and the amount of any unpaid wages and applicable damages determined  
7 by the secretary ~~or the secretary's authorized representative~~ to be valid  
8 shall be due and payable unless judicial review is sought within the time  
9 allowed by law.

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

13 Sec. 9. On and after July 1, 1999, K.S.A. 1997 Supp. 44-1005 is  
14 hereby amended to read as follows: 44-1005. (a) Any person claiming to  
15 be aggrieved by an alleged unlawful employment practice or by an alleged  
16 unlawful discriminatory practice, and who can articulate a prima facie  
17 case pursuant to a recognized legal theory of discrimination, may, per-  
18 sonally or by an attorney-at-law, make, sign and file with the commission  
19 a verified complaint in writing, articulating the prima facie case, which  
20 shall also state the name and address of the person, employer, labor or-  
21 ganization or employment agency alleged to have committed the unlawful  
22 employment practice complained of or the name and address of the per-  
23 son alleged to have committed the unlawful discriminatory practice com-  
24 plained of, and which shall set forth the particulars thereof and contain  
25 such other information as may be required by the commission.

26 (b) The commission upon its own initiative or the attorney general  
27 may, in like manner, make, sign and file such complaint. Whenever the  
28 attorney general has sufficient reason to believe that any person as herein  
29 defined is engaged in a practice of discrimination, segregation or sepa-  
30 ration in violation of this act, the attorney general may make, sign and  
31 file a complaint. Any employer whose employees or some of whom, refuse  
32 or threaten to refuse to cooperate with the provisions of this act, may file  
33 with the commission a verified complaint asking for assistance by concil-  
34 iation or other remedial action.

35 (c) Whenever any problem of discrimination because of race, relig-  
36 ion, color, sex, disability, national origin or ancestry arises, or whenever  
37 the commission has, in its own judgment, reason to believe that any per-  
38 son has engaged in an unlawful employment practice or an unlawful dis-  
39 criminatory practice in violation of this act, or has engaged in a pattern  
40 or practice of discrimination, the commission may conduct an investiga-  
41 tion without filing a complaint and shall have the same powers during  
42 such investigation as provided for the investigation of complaints. The  
43 person to be investigated shall be advised of the nature and scope of such

1 investigation prior to its commencement. The purpose of the investigation  
2 shall be to resolve any such problems promptly. In the event such prob-  
3 lems cannot be resolved within a reasonable time, the commission may  
4 issue a complaint whenever the investigation has revealed a violation of  
5 the Kansas act against discrimination has occurred. The information gath-  
6 ered in the course of the first investigation may be used in processing the  
7 complaint.

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

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

32 (f) In case of failure to eliminate such practices by conference and  
33 conciliation, or in advance thereof, if in the judgment of the commissioner  
34 or the commission circumstances so warrant, the commissioner or the  
35 commission shall commence a hearing in accordance with the provisions  
36 of the Kansas administrative procedure act naming as parties the com-  
37 plainant and the person, employer, labor organization, employment  
38 agency, realtor or financial institution named in such complaint, hereinafter  
39 referred to as respondent. A copy of the complaint shall be served  
40 on the respondent. At least four commissioners, ~~a staff hearing examiner~~  
41 ~~or a contract hearing examiner~~ *or a presiding officer from the office of*  
42 *administrative hearings* shall be designated as the presiding officer. The  
43 place of such hearing shall be in the county where respondent is doing

1 business and the acts complained of occurred.

2 (g) The complainant or respondent may apply to the presiding officer  
3 for the issuance of a subpoena for the attendance of any person or the  
4 production or examination of any books, records or documents pertinent  
5 to the proceeding at the hearing. Upon such application the presiding  
6 officer shall issue such subpoena.

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

13 (i) Any complaint filed pursuant to this act must be so filed within six  
14 months after the alleged act of discrimination, unless the act complained  
15 of constitutes a continuing pattern or practice of discrimination in which  
16 event it will be from the last act of discrimination. Complaints filed with  
17 the commission on or after July 1, 1996, may be dismissed by the com-  
18 mission on its own initiative, and shall be dismissed by the commission  
19 upon the written request of the complainant, if the commission has not  
20 issued a finding of probable cause or no probable cause or taken other  
21 administrative action dismissing the complaint within 300 days of the  
22 filing of the complaint. The commission shall mail written notice to all  
23 parties of dismissal of a complaint within five days of dismissal. Com-  
24 plaints filed with the commission before July 1, 1996, shall be dismissed  
25 by the commission upon the written request of the complainant, if the  
26 commission has not issued a finding of probable cause or no probable  
27 cause or taken other administrative action dismissing the complaint within  
28 300 days of the filing of the complaint. Any such dismissal of a complaint  
29 in accordance with this section shall constitute final action by the com-  
30 mission which shall be deemed to exhaust all administrative remedies  
31 under the Kansas act against discrimination for the purpose of allowing  
32 subsequent filing of the matter in court by the complainant, without the  
33 requirement of filing a petition for reconsideration pursuant to K.S.A. 44-  
34 1010 and amendments thereto. Dismissal of a complaint in accordance  
35 with this section shall not be subject to appeal or judicial review by any  
36 court under the provisions of K.S.A. 44-1011 and amendments thereto.  
37 The provisions of this section shall not apply to complaints alleging dis-  
38 criminatory housing practices filed with the commission pursuant to  
39 K.S.A. 44-1015 et seq. and amendments thereto.

40 (j) The respondent may file a written verified answer to the complaint  
and appear at such hearing in person or otherwise, with or without coun-  
41 sel, and submit testimony. The complainant shall appear at such hearing  
42 in person, with or without counsel, and submit testimony. The presiding  
43

1 officer or the complainant shall have the power reasonably and fairly to  
2 amend any complaint, and the respondent shall have like power to amend  
3 such respondent's answer. The presiding officer shall be bound by the  
4 rules of evidence prevailing in courts of law or equity, and only relevant  
5 evidence of reasonable probative value shall be received.

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

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

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

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

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

39 Sec. 10. On and after July 1, 1999, K.S.A. 49-606 is hereby amended  
40 to read as follows: 49-606. (a) The director, with the approval of the  
41 commission, may deny issuance or renewal of a license for repeated or  
42 willful violation of the provisions of this act or for failure to comply with  
43 any provision of a reclamation plan.

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

8 Sec. 11. On and after July 1, 1999, K.S.A. 1997 Supp. 65-163 is  
9 hereby amended to read as follows: 65-163. (a) (1) No person shall op-  
10 erate a public water supply system within the state without a public water  
11 supply system permit from the secretary. An application for a public water  
12 supply system permit shall be submitted for review and approval prior to  
13 construction and shall include: (A) A copy of the plans and specifications  
14 for the construction of the public water supply system or the extension  
15 thereof; (B) a description of the source from which the water supply is  
16 to be derived; (C) the proposed manner of storage, purification or treat-  
17 ment for the supply; and (D) such other data and information as required  
18 by the secretary of health and environment. No source of water supply  
19 in substitution for or in addition to the source described in the application  
20 or in any subsequent application for which a public water supply system  
21 permit is issued shall be used by a public water supply system, nor shall  
22 any change be made in the manner of storage, purification or treatment  
23 of the water supply without an additional public water supply system  
24 permit obtained in a manner similar to that prescribed by this section  
25 from the secretary.

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

32 (3) The secretary may adopt rules and regulations establishing a pro-  
33 gram of annual certification by public water supply systems that have staff  
34 qualified to approve the extension of distribution systems without the  
35 necessity of securing an additional permit for the extension provided the  
36 plans for the extension are prepared by a professional engineer as defined  
37 by K.S.A. 74-7003, and amendments thereto.

38 (b) (1) Whenever a complaint is made to the secretary by any city of  
39 the state, by a local health officer, or by a county or joint board of health  
40 concerning the sanitary quality of any water supplied to the public within  
41 the county in which the city, local health officer or county or joint board  
42 of health is located, the secretary shall investigate the public water supply  
43 system about which the complaint is made. Whenever the secretary has



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1 reason to believe that a public water supply system within the state is  
2 being operated in violation of an applicable state law or an applicable rule  
3 and regulation of the secretary, the secretary may investigate the public  
4 water supply system.

5 (2) Whenever an investigation of any public water supply system is  
6 undertaken by the secretary, it shall be the duty of the supplier of water  
7 under investigation to furnish to the secretary information to determine  
8 the sanitary quality of the water supplied to the public and to determine  
9 compliance with applicable state laws and rules and regulations. The sec-  
10 retary may issue an order requiring changes in the source or sources of  
11 the public water supply system or in the manner of storage, purification  
12 or treatment utilized by the public water supply system before delivery  
13 to consumers, or distribution facilities, collectively or individually, as may  
14 in the secretary's judgment be necessary to safeguard the sanitary quality  
15 of the water and bring about compliance with applicable state law and  
16 rules and regulations. The supplier of water shall comply with the order  
17 of the secretary.

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

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

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

36 (4) Whenever complaint is made to the secretary by the mayor of any  
37 city of the state, by a local health officer or by a county or joint board of  
38 health, or whenever an investigation is undertaken at the initiative of the  
39 secretary, relating to any alleged violation of the provisions of the permit  
40 for placement or storage of municipal water treatment residues in such  
41 basins, the public water supply system operator shall furnish all infor-  
42 mation the secretary requires. If the secretary finds that there is any  
43 violation of the terms of the permit, that the means of placement and

1 storage exceed the terms of the permit or that any other condition exists  
2 by reason of the means of placement and storage that may be detrimental  
3 to the health of any inhabitants of the state or to the environment, the  
4 secretary shall have the authority to issue an order amending the permit  
5 or otherwise requiring the operator to perform remedial measures to  
6 curtail or prevent such detrimental conditions.

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

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

22 (f) There is hereby created an advisory committee to make recom-  
23 mendations regarding: (1) Fees to be adopted by the secretary under  
24 subsection (e); (2) means of strengthening on-site technical assistance to  
25 public water supply systems; (3) standards for on-site and classroom water  
26 treatment operator certification programs; (4) other matters concerning  
27 public water supplies; and (5) to advise the secretary regarding expendi-  
28 ture of moneys in the public water supply fee fund created by K.S.A. 65-  
29 163c and amendments thereto. Such advisory committee shall consist of  
30 one member appointed by the secretary to represent the department of  
31 health and environment, one member appointed by the director of the  
32 Kansas water office to represent such office and two members appointed  
33 by the secretary as follows: One from three nominations submitted by the  
34 Kansas section of the American waterworks association, and one from  
35 three nominations submitted by the Kansas rural water association. Mem-  
36 bers of the advisory committee shall serve without compensation or re-  
37 imbursement of expenses. The advisory committee shall meet at least four  
38 times each year on call of the secretary or a majority of the members of  
39 the committee.

40 Sec. 12. On and after July 1, 1999, K.S.A. 65-163a is hereby amended  
41 read as follows: 65-163a. (a) Any supplier of water may refuse to deliver  
42 water through pipes and mains to any premises where a condition exists  
43 which might lead to the contamination of the public water supply system

1 and may continue to refuse the delivery of water to the premises until  
2 the condition is remedied.

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

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

17 Sec. 13. On and after July 1, 1999, K.S.A. 1997 Supp. 65-525 is  
18 hereby amended to read as follows: 65-525. Except as otherwise provided  
19 in K.S.A. 1997 Supp. 65-531 and amendments thereto, information re-  
20 ceived by the licensing agency through filed reports, inspections or oth-  
21 erwise authorized under K.S.A. 65-501 to 65-522, inclusive, and amend-  
22 ments thereto shall not be disclosed publicly in such manner as to identify  
23 individuals. In any hearings conducted under the licensing or regulation  
24 provisions of K.S.A. 65-501 to 65-522, inclusive, and amendments thereto,  
25 the ~~hearing~~ *presiding* officer may close the hearing to the public to pre-  
26 vent public disclosure of matters relating to individuals restricted by other  
27 laws.

28 Sec. 14. On and after July 1, 1999, K.S.A. 1997 Supp. 65-526 is  
29 hereby amended to read as follows: 65-526. The secretary of health and  
30 environment, in addition to any other penalty prescribed under article 5  
31 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory of  
32 the provisions thereof or supplemental thereto, may assess a civil fine,  
33 after proper notice and an opportunity to be heard *in accordance with*  
34 *the Kansas administrative procedure act*, against a licensee or registrant  
35 for a violation of such provisions or rules and regulations adopted pur-  
36 suant thereto which affect significantly and adversely the health, safety  
37 or sanitation of children in a child care facility or family day care home.  
38 A civil fine assessed under this section shall not exceed \$500. All fines  
39 assessed and collected under this section shall be remitted promptly to  
40 the state treasurer. Upon receipt thereof, the state treasurer shall deposit  
41 the entire amount in the state treasury and credit it to the state general  
42 fund.

43 Sec. 15. On and after July 1, 1999, K.S.A. 65-673 is hereby amended

1 to read as follows: 65-673. (a) The authority to promulgate rules and  
2 regulations for the efficient enforcement of this act is hereby vested in  
3 the secretary. The secretary is hereby authorized to make the regulations  
4 promulgated under this act conform, insofar as practicable, with those  
5 promulgated under the federal act.

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

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

32 Sec. 16. On and after July 1, 1999, K.S.A. 65-720a is hereby amended  
33 to read as follows: 65-720a. (a) The term "frozen dairy dessert" means  
34 and includes products containing milk or cream and other ingredients  
35 which are frozen or semi-frozen prior to consumption, such as ice cream,  
36 ice milk or sherbet, including frozen dairy desserts for special dietary  
37 purposes.

38 (b) It shall be the duty of the ~~state board~~ *secretary* of agriculture, and  
39 it is hereby authorized, to prescribe and adopt rules and regulations es-  
40 tablishing definitions and standards of identity and quality for frozen dairy  
41 desserts. Prior to the adoption of any rules and regulations establishing  
42 definitions and standards for these products, the ~~board or its authorized~~  
43 ~~representative~~ *secretary* shall give notice to all known interested persons

1 of the time and place of a hearing, at which time any interested person  
2 may appear and present such person's views. The board may appoint a  
3 hearing officer to secretary or a presiding officer from the office of ad-  
4 ministrative hearings shall conduct such hearing and make recommen-  
5 dations.

6 (c) The board secretary, in adopting rules and regulations establishing  
7 such definitions and standards, shall take into consideration the following  
8 as guidelines for establishment of such standards: (a) Ingredients; (b)  
9 pasteurization; (c) acidity; (d) butterfat, milk solids and total food solids  
10 content; (e) weight per unit of measurement; (f) flavor; and flavor label-  
11 ing; (g) coloring, and (h) the standards of other states and those adopted  
12 under the federal food, drug and cosmetic act, for the sake of uniformity.

13 (d) Nothing in this section or in any rules and regulations adopted  
14 pursuant to this section shall prohibit a licensed food service establish-  
15 ment from preparing ice cream for sale to customers of the food service  
16 establishment so long as the ice cream mix or mixture is cooked, and if  
17 such ice cream mix or mixture contains eggs is cooked according to federal  
18 food and drug administration general provisions for making frozen des-  
19 serts using a high temperature, short-term method, all dairy products  
20 used in such mixture are pasteurized and the bacteria and coliform quality  
21 standards for the ice cream are within the limits established under K.S.A.  
22 65-720f and amendments thereto.

23 Sec. 17. On and after July 1, 1999, K.S.A. 65-747 is hereby amended  
24 to read as follows: 65-747. It shall be unlawful for any person required to  
25 pay or remit a fee under this act to sell, offer for sale, receive or distribute  
26 grade A raw milk for pasteurization, grade A pasteurized milk or grade A  
27 pasteurized milk products within this state without holding a valid permit  
28 to do so from the state dairy commissioner. Such permit shall be issued  
29 upon application to the dairy commissioner, and no fee shall be charged  
30 therefor. Whenever the dairy commissioner shall determine that any per-  
31 son holding such permit has failed to pay or remit any required fee or  
32 fees, or any part thereof, or has failed to submit a required report, or has  
33 submitted a false report, the commissioner may, upon due notice and a  
34 hearing thereon, revoke or suspend such permit. Any such hearing shall  
35 be held by the state board of agriculture through the dairy commissioner  
36 or the dairy commissioner's authorized representative or by a hearing  
37 officer, duly appointed by the board through the dairy commissioner or  
38 the dairy commissioner's authorized representative a presiding officer  
39 from the office of administrative hearings. The required notice and hear-  
40 ing shall be in accordance with the provisions of the Kansas administrative  
41 procedure act.

42 Sec. 18. On and after July 1, 1999, K.S.A. 65-753 is hereby amended  
43 to read as follows: 65-753. (a) If the state board of agriculture through

1 the dairy commissioner or the dairy commissioner's authorized represen-  
2 tative determines after notice and opportunity for a hearing that any per-  
3 son has engaged in or is engaging in any act or practice constituting a  
4 violation of any provision of this act or any rule and regulation or order  
5 issued thereunder, the state board of agriculture through the dairy com-  
6 missioner by written order, may require that such person cease and desist  
7 from the unlawful act or practice and take such affirmative action as in  
8 the judgment of the state board of agriculture through the dairy com-  
9 missioner will carry out the purposes of the violated or potentially violated  
10 provision of this act or rule and regulation or order issued thereunder.

11 (b) If the state board of agriculture through the dairy commissioner  
12 makes written findings of fact that there is a situation involving an im-  
13 mediate danger to the public health, safety or welfare or that the public  
14 interest will be irreparably harmed by delay in issuing an order under  
15 subsection (a), the state board of agriculture through the dairy commis-  
16 sioner may issue an emergency temporary cease and desist order. Such  
17 order, even when not an order within the meaning of K.S.A. 77-502, and  
18 amendments thereto, shall be subject to the same procedures as an emer-  
19 gency order issued under K.S.A. 77-536, and amendments thereto. Upon  
20 the entry of such an order, the state board of agriculture through the  
21 dairy commissioner shall promptly notify the person subject to the order  
22 that: (1) It has been entered; (2) the reasons therefor; and (3) that upon  
23 written request within 15 days after service of the order the matter will  
24 be set for a hearing which shall be conducted in accordance with the  
25 provisions of the Kansas administrative procedure act. If no hearing is  
26 requested and none is ordered by the dairy commissioner, the order will  
27 remain in effect until it is modified or vacated by the state board of  
28 agriculture through the dairy commissioner. If a hearing is requested or  
29 ordered, the state board of agriculture through the dairy commissioner  
30 after giving notice of and opportunity for hearing to the person subject  
31 to the order, shall by written findings of fact and conclusions of law vacate,  
32 modify or make permanent the order.

33 Sec. 19. On and after July 1, 1999, K.S.A. 65-2305 is hereby  
34 amended to read as follows: 65-2305. (a) The secretary of health and  
35 environment shall have the power and authority and is hereby charged  
36 with the duty of enforcing the provisions of this act, and the secretary is  
37 hereby authorized and directed to make, amend or revoke rules and reg-  
38 ulations and orders for the efficient enforcement of this act.

39 (b) In the event of findings by the secretary that there is an existing  
40 or imminent shortage of any ingredient required to enrich flour, white  
41 bread or rolls in order to comply with this act, and that because of such  
42 shortage the sale and distribution of flour or white bread or rolls may be  
43 impeded by the enforcement of this act, the secretary shall issue an order,

1 to be effective immediately upon issuance, permitting the omission of  
2 such ingredient from flour or white bread or rolls; and if the secretary  
3 finds it necessary or appropriate, excepting such foods from the labeling  
4 requirements of this act until the further order of the secretary. Any such  
5 findings may be made without hearing on the basis of an order or of  
6 factual information supplied by the appropriate agency or officer. In the  
7 absence of any such order of the appropriate agency or factual informa-  
8 tion supplied by it, the secretary on the secretary's own motion may, and  
9 upon receiving the sworn statement of 10 or more persons subject to this  
10 act that they believe such a shortage exists or is imminent shall hold a  
11 public hearing as provided in subsection (f) with respect thereto, at which  
12 any interested person may present evidence; and shall make findings  
13 based upon the evidence presented.

14 (c) Whenever the secretary has reason to believe that such shortage  
15 no longer exists, the secretary shall hold a public hearing as provided in  
16 subsection (f), after notice shall have been given as provided in K.S.A.  
17 77-421 prior to adoption of rules and regulations, at which any interested  
18 person may present evidence, and the secretary shall make findings based  
19 upon the evidence so presented. If the secretary's findings be that such  
20 shortage no longer exists, the secretary shall issue an order revoking such  
21 previous order. Undisposed floor stocks of flour on hand at the effective  
22 date of such revocation order, or flour manufactured prior to such effec-  
23 tive date, for sale in this state may thereafter be lawfully sold or disposed  
24 of.

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

27 (e) For the purposes of this act, the secretary is authorized to take  
28 samples for analysis and to conduct examinations and investigations  
29 through any officers or employees under the secretary's supervision, and  
30 all such officers and employees shall have authority to enter, at reasonable  
31 times, any factory, mill, warehouse, shop or establishment where flour,  
32 white bread or rolls are manufactured, processed, packed, sold, or held,  
33 or any vehicle being used for the transportation thereof, and to inspect  
34 any such place or vehicle and any flour, white bread or rolls therein, and  
35 all pertinent equipment, materials, containers and labeling.

36 (f) ~~The secretary shall prescribe by rule and regulation the procedure~~  
37 ~~for conducting a hearing under this section and may designate a hearing~~  
38 ~~officer to conduct the hearing. The hearing officer shall have the same~~  
39 ~~powers in conducting the hearing as the secretary. All administrative pro-~~  
40 ~~ceedings conducted pursuant to article 23 of chapter 65 of the Kansas~~  
41 ~~Statutes Annotated, and amendments thereto, shall be conducted in ac-~~  
42 ~~cordance with the provisions of the Kansas administrative procedures act~~  
43 ~~and the act for judicial review and civil enforcement of agency actions.~~

1 In conducting the hearing the secretary or the hearing *presiding* officer  
2 may issue subpoenas to compel the attendance of witnesses, administer  
3 oaths, take testimony, require the production of books, papers, records,  
4 correspondence or other documents which the secretary or the hearing  
5 *presiding* officer deems relevant and render decisions. In case of the  
6 refusal of any person to comply with any subpoena issued under this  
7 section or to testify with respect to any matter *about* which the person  
8 may be lawfully questioned, the district court of any county on application  
9 of the secretary may issue an order requiring such person to comply with  
10 the subpoena and to testify, and any failure to obey the order of the court  
11 may be punished by the court as a contempt thereof.

12 Sec. 20. On and after July 1, 1999, K.S.A. 65-3483 is hereby  
13 amended to read as follows: 65-3483. (a) If, within 150 days after receipt  
14 of an application, the secretary has not denied the application, the sec-  
15 retary shall notify the board of county commissioners and the governing  
16 bodies of all cities located within a ten-mile radius of the proposed facility.  
17 The secretary also shall notify the state corporation commission and the  
18 secretary of wildlife and parks of the proposed facility.

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

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

25 (1) Set a date and arrange for publication of notice of a public hearing  
26 in a newspaper having major circulation in the vicinity of the proposed  
27 facility. Such hearing shall be in the county in which the proposed facility  
28 will be located. Additional hearings may be held at such other places as  
29 the secretary deems suitable. At such hearing or hearings, the applicant  
30 may present testimony in favor of the application. Any person may appear  
31 or be represented by counsel to present testimony in support of or op-  
32 position to the application. The public notice shall:

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

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

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

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

43 (e) The secretary shall consider the impact of the proposed facility



1 on the surrounding area in which it is to be located and make a final  
2 determination on the application.

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

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

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

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

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

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

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

17 (A) The natural environment and ecology;

18 (B) public health and safety;

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

20 (D) water and air quality and wildlife.

21 (g) The secretary also shall consider the concerns and objections sub-  
22 mitted by the public. The secretary shall facilitate efforts to provide that  
23 the concerns and objections are mitigated by establishing additional stip-  
24 ulations specifically applicable to the proposed site and operation at that  
25 site. The secretary, to the fullest extent practicable, shall integrate by  
26 stipulation the provisions of the local ordinances, permits or require-  
27 ments.

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

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

34 Sec. 21. On and after July 1, 1999, K.S.A. 65-3488 is hereby  
35 amended to read as follows: 65-3488. (a) Permits for PCB disposal facil-  
36 ities shall be issued for fixed terms not to exceed 10 years.

37 (b) Plans, designs and relevant data for the construction of PCB dis-  
38 posal 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.

41 (c) Permits granted by the secretary, as provided in this act, shall be  
42 revocable or subject to suspension whenever the secretary determines  
43 that the PCB disposal facility is, or has been constructed in violation of

1 this act or the rules and regulations or standards adopted pursuant to the  
2 act, or is creating a hazard to the public health or safety or to the envi-  
3 ronment, or for failure to make payment of any fee to any funds created  
4 under this act.

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

10 Sec. 22. On and after July 1, 1999, K.S.A. 65-3490 is hereby  
11 amended to read as follows: 65-3490. (a) The secretary or the director of  
12 the division of environment, if designated by the secretary, upon a finding  
13 that a person has violated any provision of this act or any rule and regu-  
14 lation adopted by the secretary pursuant to this act may impose a penalty  
15 not to exceed \$10,000 which shall constitute an actual and substantial  
16 economic deterrent to the violation for which it is assessed and, in the  
17 case of a continuing violation, every day such violation continues shall be  
18 deemed a separate violation.

19 (b) No penalty shall be imposed pursuant to this section except after  
20 notice of violation and opportunity for hearing upon the written order of  
21 the secretary or the director of the division of environment, if designated  
22 by the secretary, to the person who committed the violation. The order  
23 shall state the violation, the penalty to be imposed and, in the case of an  
24 order of the director of the division of environment, the right to appeal  
25 to the secretary for a hearing thereon. Any person may appeal an order  
26 of the director of the division of environment by making a written request  
27 to the secretary for a hearing within 15 days of receipt ~~service~~ of such  
28 order. The secretary shall hear the person within 30 days after receipt of  
29 such request, unless such time period is waived or extended by written  
30 consent of all parties or by a showing of good cause, and shall give not  
31 less than 10 days' written notice of the time and place of the hearing.  
32 ~~Within 30 days after such hearing and receipt of briefs or oral arguments,  
33 unless such time period is waived or extended by written consent of all  
34 parties or by a showing of good cause, the secretary shall affirm, reverse  
35 or modify the order of the director and shall specify the reasons therefor.  
36 Nothing in this act shall require the observance of formal rules of evi-  
37 dence or pleading at any hearing before the secretary or director. Hear-  
38 ings under this subsection shall be conducted in accordance with the Kan-  
39 sas administrative procedure act.~~

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

1 Sec. 23. On and after July 1, 1999, K.S.A. 66-1,117 is hereby  
2 amended to read as follows: 66-1,117. The corporation commission shall  
3 prescribe forms of applications for certificates, permits, and licenses for  
4 the use of prospective applicants and shall make regulations for the filing  
5 thereof. The commission may ~~designate one of its attorneys~~ *use a presid-*  
6 *ing officer from the office of administrative hearings* as a presiding officer  
7 for the hearing of any application for a certificate or license and the pre-  
8 siding officer shall make written findings and recommendations to the  
9 commission.

10 Sec. 24. On and after July 1, 1999, K.S.A. 1997 Supp. 74-4904 is  
11 hereby amended to read as follows: 74-4904. (1) The system may sue and  
12 be sued in its official name, but its trustees, officers, employees and agents  
13 shall not be personally liable for acts of the system unless such person  
14 acted with willful, wanton or fraudulent misconduct or intentionally tor-  
15 tious conduct. Any agreement in settlement of litigation involving the  
16 system and the investment of moneys of the fund is a public record as  
17 provided in K.S.A. 45-215 et seq. and amendments thereto and subject  
18 to the provisions of that act. The service of all legal process and of all  
19 notices which may be required to be in writing, whether legal proceedings  
20 or otherwise, shall be had on the executive secretary at such executive  
21 secretary's office. All actions or proceedings directly or indirectly against  
22 the system shall be brought in Shawnee county.

23 (2) Any person aggrieved by any order or decision of the board made  
24 without a hearing, may, within 30 days after notice of the order or decision  
25 of the board make written request to the board for a hearing thereon.  
26 The board shall hear such party or parties in accordance with the provi-  
27 sions of the Kansas administrative procedure act at its next regular meet-  
28 ing or at a special meeting within 60 days after receipt of such request.  
29 For the purpose of any hearing under this section, the board may ~~appoint~~  
30 ~~one or more presiding officers. Any such presiding officer shall be a mem-~~  
31 ~~ber of the board or an employee of the board. Any such appointment~~  
32 ~~shall apply to a particular hearing or to a set or class of hearings as spec-~~  
33 ~~ified by the board in making such appointment~~ *use a presiding officer*  
34 *from the office of administrative hearings.* The board shall review an initial  
35 order resulting from a hearing under this section. Any member of the  
36 board who serves as a presiding officer shall be reimbursed for actual and  
37 necessary expenses and shall receive compensation in an amount fixed by  
38 the board not to exceed the per diem compensation allowable for mem-  
39 bers of the board.

40 Sec. 25. On and after July 1, 1999, K.S.A. 1997 Supp. 74-8804 is  
41 hereby amended to read as follows: 74-8804. (a) During race meetings,  
42 the commission and its designated employees may observe and inspect  
43 all racetrack facilities operated by licensees and all racetracks simulcasting

1 races to racetrack facilities in Kansas, including but not limited to all  
2 machines, equipment and facilities used for parimutuel wagering.

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

7 (c) The commission may examine, or cause to be examined by any  
8 agent or representative designated by the commission, any books, papers,  
9 records or memoranda of any licensee, or of any racetrack or business  
10 involved in simulcasting races to racetrack facilities in Kansas, for the  
11 purpose of ascertaining compliance with any provision of this act or any  
12 rule and regulation adopted hereunder.

13 (d) The commission may issue subpoenas to compel access to or for  
14 the production of any books, papers, records or memoranda in the cus-  
15 tody or control of any licensee or officer, member, employee or agent of  
16 any licensee, or to compel the appearance of any licensee or officer, mem-  
17 ber, employee or agent of any licensee, or of any racetrack or business  
18 involved in simulcasting races to racetrack facilities in this state, for the  
19 purpose of ascertaining compliance with any of the provisions of this act  
20 or any rule and regulation adopted hereunder. Subpoenas issued pursuant  
21 to this subsection may be served upon individuals and corporations in the  
22 same manner provided in K.S.A. 60-304 and amendments thereto for the  
23 service of process by any officer authorized to serve subpoenas in civil  
24 actions or by the commission or an agent or representative designated by  
25 the commission. In the case of the refusal of any person to comply with  
26 any such subpoena, the executive director may make application to the  
27 district court of any county where such books, papers, records, memo-  
28 randa or person is located for an order to comply.

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

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

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

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

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

4 (g) The commission shall review and approve all proposed construc-  
5 tion and major renovations to racetrack facilities owned or leased by li-  
6 censees.

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

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

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

- 19 (1) The steward or racing judge mistakenly interpreted the law;  
20 (2) new evidence of a convincing nature is produced; or  
21 (3) the best interests of racing and the state may be better served.

22 A decision of the commission to overrule any decision of a steward or  
23 racing judge shall not change the distribution of parimutuel pools to the  
24 holders of winning tickets. A decision of the commission which would  
25 affect the distribution of purses in any race shall not result in a change  
26 in that distribution unless a written claim is submitted to the commission  
27 within 48 hours after completion of the contested race by one of the  
28 owners or trainers of a horse or greyhound which participated in such  
29 race and a preponderance of evidence clearly indicates to the commission  
30 that one or more of the grounds for protest, as provided for in rules and  
31 regulations of the commission, has been substantiated.

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

37 (l) The commission shall adopt rules and regulations specifying and  
38 regulating:

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

42 (2) that equipment for administering drugs or medications to horses  
43 or greyhounds which may be possessed within the confines of a racetrack

4-25

1 facility.

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

6 (n) The commission shall require fingerprinting of all persons nec-  
7 essary to verify qualification for employment by the commission or to  
8 verify qualification for any license, including a simulcasting license, issued  
9 pursuant to this act. The commission shall submit such fingerprints to the  
10 Kansas bureau of investigation and to the federal bureau of investigation  
11 for the purposes of verifying the identity of such persons and obtaining  
12 records of criminal arrests and convictions.

13 (o) The commission may receive from commission security person-  
14 nel, the Kansas bureau of investigation or other criminal justice agencies,  
15 including but not limited to the federal bureau of investigation and the  
16 federal internal revenue service, such criminal history record information  
17 (including arrest and nonconviction data), criminal intelligence informa-  
18 tion and information relating to criminal and background investigations  
19 as necessary for the purpose of determining qualifications of licensees of  
20 the commission, employees of the commission, applicants for employ-  
21 ment by the commission, and applicants for licensure by the commission,  
22 including applicants for simulcasting licenses. Upon the written request  
23 of the chairperson of the commission, the commission may receive from  
24 the district courts such information relating to juvenile proceedings as  
25 necessary for the purpose of determining qualifications of employees of  
26 and applicants for employment by the commission and determining qual-  
27 ifications of licensees of and applicants for licensure by the commission.  
28 Such information, other than conviction data, shall be confidential and  
29 shall not be disclosed except to members and employees of the commis-  
30 sion as necessary to determine qualifications of such licensees, employees  
31 and applicants. Any other disclosure of such confidential information is a  
32 class A misdemeanor and shall constitute grounds for removal from office,  
33 termination of employment or denial, revocation or suspension of any  
34 license issued under this act.

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

40 (q) The commission may enter into agreements with the federal bu-  
41 ureau of investigation, the federal internal revenue service, the Kansas  
42 attorney general or any state, federal or local agency as necessary to carry  
43 out the duties of the commission under this act.

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

3 Sec. 26. On and after July 1, 1999, K.S.A. 1997 Supp. 74-8816 is  
4 hereby amended to read as follows: 74-8816. (a) The commission shall  
5 require occupation licenses for:

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

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

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

17 (c) A person required to be licensed pursuant to subsection (a) shall  
18 apply for such license in a manner and upon forms prescribed and fur-  
19 nished by the commission. The commission may require the applicant to  
20 submit to fingerprinting. Occupation licenses shall be issued for a period  
21 established by the commission but not less than one year or more than  
22 three years. The commission shall establish the amount of application  
23 fees and license fees for different types of occupation licenses, but no  
24 such fee shall exceed \$200 a year. The application fee shall not be re-  
25 fundable if the applicant fails to qualify for a license and shall include the  
26 cost of processing fingerprints if they are required by the commission.

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

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

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

42 (2) has been convicted of a violation of any law of any state or of the  
43 United States involving gambling or controlled substances or has been

1 adjudicated in the last five years in any such court of committing as a  
2 juvenile an act which, if committed by an adult, would constitute such a  
3 violation;

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

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

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

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

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

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

19 (f) The commission may suspend or revoke an occupation license for  
20 any reason which would justify refusal to issue such a license and may  
21 impose a fine not exceeding \$5,000 for each violation upon any occupation  
22 licensee found to have violated any provision of this act or any rule and  
23 regulation of the commission. Such fine may be imposed in addition to  
24 or in lieu of suspending or revoking such person's occupation license.  
25 Proceedings for the suspension or revocation of an occupation license or  
26 imposition of a fine pursuant to this subsection shall be conducted by the  
27 commission or ~~its appointed hearing officer~~ *a presiding officer from the*  
28 *office of administrative hearings* in accordance with the Kansas admin-  
29 istrative procedure act.

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

38 (h) The stewards at any horse race meeting and the racing judges at  
39 any greyhound race meeting may impose on an occupation licensee a civil  
40 fine not exceeding \$500 or may suspend any occupation licensee's license  
41 a period not exceeding 15 days upon a finding by at least two of the  
42 wards or racing judges that there is probable cause to believe that the  
43 occupation licensee has violated the provisions of this act or any rule or



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1 regulation of the commission. No such fine or suspension shall be ordered  
2 except after notice and opportunity for hearing in accordance with pro-  
3 cedures established by rules and regulations of the commission. Any order  
4 imposing such a fine or suspension is effective when rendered. The order  
5 shall be subject to appeal to the commission, and may be stayed pending  
6 such appeal, as provided by rules and regulations of the commission.  
7 Proceedings on appeal shall be in accordance with the provisions of the  
8 Kansas administrative procedure act.

9 Sec. 27. On and after July 1, 1999, K.S.A. 1997 Supp. 74-8817 is  
10 hereby amended to read as follows: 74-8817. (a) No organization licensee  
11 or facility manager licensee shall permit any business not owned and  
12 operated by the organization licensee to sell goods or services within a  
13 racetrack facility where the organization licensee conducts race meetings  
14 unless such business has been issued a concessionaire license by the com-  
15 mission.

16 (b) Businesses required to be licensed pursuant to this section shall  
17 apply for concessionaire licenses in a manner and upon forms prescribed  
18 and furnished by the commission. The commission shall require disclo-  
19 sure of information about the owners and officers of each applicant and  
20 may require such owners and officers to submit to fingerprinting. The  
21 commission also may require disclosure of information about and finger-  
22 printing of such employees of each applicant as the commission considers  
23 necessary. Concessionaire licenses shall be issued for a period of time  
24 established by the commission but not to exceed 10 years. The commis-  
25 sion shall establish a schedule of application fees and license fees for  
26 concessionaire licenses based upon the type and size of business. The  
27 application fee shall not be refundable if the business fails to qualify for  
28 a license. If the application fee is insufficient to pay the reasonable ex-  
29 penses of processing the application and investigating the applicant's qual-  
30 ifications for licensure, the commission shall require the applicant to pay  
31 to the commission, at such times and in such form as required by the  
32 commission, any additional amounts necessary to pay such expenses. No  
33 license shall be issued to an applicant until the applicant has paid such  
34 additional amounts in full, and such amounts shall not be refundable  
35 except to the extent that they exceed the actual expenses of processing  
36 the application and investigating the applicant's qualifications for licen-  
37 sure.

38 (c) The commission may require applicants as a condition of licensure  
39 to consent to allow agents of the Kansas bureau of investigation or security  
40 personnel of the commission to search without warrant the licensee's  
41 premises and personal property and the persons of its owners, officers  
42 and employees while engaged in the licensee's business within the race-  
43 track facility or adjacent facilities under the control of the organization

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1 licensee for the purpose of investigating criminal violations of this act or  
 2 violations of rules and regulations of the commission.

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

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

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

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

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

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

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

33 (f) The commission may provide by rules and regulations for the tem-  
 34 porary suspension of a concessionaire license by summary adjudicative  
 35 proceedings in accordance with the Kansas administrative procedure act  
 36 upon finding that there is probable cause to believe that grounds exist for  
 37 a permanent suspension or revocation of such license. Such suspension  
 38 shall be for a period not exceeding 30 days. Upon expiration of such  
 39 suspension, the license shall be restored unless the license has been sus-  
 40 ded or revoked as a result of proceedings conducted pursuant to sub-  
 41 .on (e).

42 Sec. 28. On and after July 1, 1999, K.S.A. 1997 Supp. 74-8837 is  
 43 hereby amended to read as follows: 74-8837. (a) No organization licensee

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1 or facility manager licensee shall permit any business not owned and  
2 operated by the organization licensee to provide integral racing or wa-  
3 gering equipment or services, as designated by the commission, to an  
4 organization licensee unless such business has been issued a racing or  
5 wagering equipment or services license by the commission. Such equip-  
6 ment and services include but are not limited to totalisator, photo finish,  
7 video replay and video reception and transmission equipment or services.

8 (b) Businesses required to be licensed pursuant to this section shall  
9 apply for racing or wagering equipment or services licenses in a manner  
10 and upon forms prescribed and furnished by the commission. The com-  
11 mission shall require disclosure of information about the owners and of-  
12 ficers of each applicant and may require such owners and officers to  
13 submit to fingerprinting. The commission also may require disclosure of  
14 information about and fingerprinting of such employees of each applicant  
15 as the commission considers necessary. Racing or wagering equipment or  
16 services licenses shall be issued for a period of time established by the  
17 commission but not to exceed 10 years. The commission shall establish a  
18 schedule of application fees and license fees for racing or wagering equip-  
19 ment or services licenses based upon the type and size of business. The  
20 application fee shall not be refundable if the business fails to qualify for  
21 a license. If the application fee is insufficient to pay the reasonable ex-  
22 penses of processing the application and investigating the applicant's qual-  
23 ifications for licensure, the commission shall require the applicant to pay  
24 to the commission, at such times and in such form as required by the  
25 commission, any additional amounts necessary to pay such expenses. No  
26 license shall be issued to an applicant until the applicant has paid such  
27 additional amounts in full, and such amounts shall not be refundable  
28 except to the extent that they exceed the actual expenses of processing  
29 the application and investigating the applicant's qualifications for licen-  
30 sure.

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

39 (d) Denial of a racing or wagering equipment or services license by  
40 the commission shall be in accordance with the Kansas administrative  
41 procedure act. The commission may refuse to issue a racing or wagering  
42 equipment or services license to any business if any person having an  
43 ownership interest in such business, any person who is an officer of such

1 business or any person employed by such business within the racetrack  
2 facility:

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

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

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

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

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

21 (e) The commission may suspend or revoke the racing or wagering  
22 equipment or services license of any business for any reason which would  
23 justify refusal to issue such a license. Proceedings to suspend or revoke  
24 such license shall be conducted by the commission or ~~its appointed hear-~~  
25 ~~ing officer~~ *a presiding officer from the office of administrative hearings*  
26 in accordance with the provisions of the Kansas administrative procedure  
27 act.

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

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

39 Sec. 29. K.S.A. 75-37,121 is hereby amended to read as follows:

40 75-37,121. On and after July 1, 1998: (a) There is created the office of  
41 ministrative hearings within the department of administration, to be  
42 headed by a director appointed by the secretary of administration. *The*  
43 *director shall be in the unclassified service under the Kansas civil service*

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1 *act.*

2 (b) The office ~~shall may~~ employ ~~administrative law judges presiding~~  
 3 ~~officers~~, court reporters and other support personnel as necessary to con-  
 4 duct proceedings required by the Kansas administrative procedure act for  
 5 adjudicative proceedings of the department of social and rehabilitation  
 6 services. The office shall conduct adjudicative proceedings of the de-  
 7 partment of social and rehabilitation services which are not under the  
 8 Kansas administrative procedure act when requested by such agency.  
 9 Only a person admitted to practice law in this state *or a person directly*  
 10 *supervised by a person admitted to practice law in this state* may be  
 11 employed as ~~an administrative law judge a presiding officer~~. The office  
 12 may employ regular part-time personnel. Persons employed by the office  
 13 shall be under the classified civil service.

14 (c) If the office cannot furnish one of its ~~administrative law judges~~  
 15 ~~presiding officers~~ in response to the department of social and rehabilita-  
 16 tion services request, the director shall designate in writing a full-time  
 17 employee of an agency other than the department of social and rehabil-  
 18 itation services to serve as ~~administrative law judge presiding officer~~ for  
 19 the proceeding, but only with the consent of the employing agency. The  
 20 designee must possess the same qualifications required of ~~administrative~~  
 21 ~~law judges presiding officers~~ employed by the office.

22 (d) The director may furnish ~~administrative law judges presiding of-~~  
 23 ~~icers~~ on a contract basis to any governmental entity to conduct any pro-  
 24 ceeding not subject to the Kansas administrative procedure act or not  
 25 listed in K.S.A. 77-551 and amendments thereto.

26 (e) ~~On or before January 1, 1990~~, The department *secretary* of ad-  
 27 ministration ~~shall may~~ adopt rules and regulations:

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

32 ~~(2)~~ To establish procedures for agencies to request and for the di-  
 33 rector to assign ~~administrative law judges presiding officers~~. The depart-  
 34 ment of social and rehabilitation services may neither select nor reject  
 35 any individual ~~administrative law judge presiding officer~~ for any proceed-  
 36 ing except in accordance with the Kansas administrative procedure act;

37 ~~(3)~~ (2) to establish procedures and adopt forms, consistent with the  
 38 Kansas administrative procedure act, the model rules of procedure, and  
 39 other provisions of law, to govern ~~administrative law judges presiding~~  
 40 ~~officers; and~~

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

43 ~~(5)~~ (3) to facilitate the performance of the responsibilities conferred

1 upon the office by the Kansas administrative procedure act.  
 2 (f) The director may:  
 3 ~~(1) Maintain a staff of reporters and other personnel; and~~  
 4 ~~(2) implement the provisions of this section and rules and regulations~~  
 5 ~~adopted under its authority.~~

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

9 (h) Effective July 1, 1998, personnel in the administrative hearings  
 10 section of the department of social and rehabilitation services and support  
 11 personnel for such ~~administrative law judges presiding officers~~, shall be  
 12 transferred to ~~and shall become employees~~ of the office of administrative  
 13 hearings. Such personnel shall retain all rights under the state personnel  
 14 system and retirement benefits under the laws of this state, ~~and such~~  
 15 ~~which had accrued to or vested in such personnel prior to the effective~~  
 16 ~~date of this section.~~ Such person's services shall be deemed to have been  
 17 continuous. ~~All transfers of personnel positions in the classified service~~  
 18 ~~under the Kansas civil service act shall be in accordance with civil service~~  
 19 ~~laws and any rules and regulations adopted thereunder.~~ This act shall not  
 20 affect any matter pending before an administrative hearing officer at the  
 21 time of the effective date of the transfer, and such matter shall proceed  
 22 as though no transfer of employment had occurred.

23 Sec. 30. On and after July 1, 1999, K.S.A. 75-37,121, as amended by  
 24 section 29 of this act, is hereby amended to read as follows: 75-37,121.  
 25 On and after July 1, 1998: (a) There is created the office of administrative  
 26 hearings within the department of administration, to be headed by a di-  
 27 rector appointed by the secretary of administration.

28 (b) The office may employ presiding officers, court reporters and  
 29 other support personnel as necessary to conduct proceedings required by  
 30 ~~the Kansas administrative procedure act for adjudicative proceedings of~~  
 31 ~~the department of social and rehabilitation services.~~ The office shall con-  
 32 duct adjudicative proceedings of ~~the department of social and rehabili-~~  
 33 ~~tation services any state agency~~ which are not under the Kansas admin-  
 34 istrative procedure act when requested by such agency. Only a person  
 35 admitted to practice law in this state or a person directly supervised by a  
 36 person admitted to practice law in this state may be employed as a pre-  
 37 siding officer. The office may employ regular part-time personnel. Per-  
 38 sons employed by the office shall be under the classified civil service.

39 (c) If the office cannot furnish one of its presiding officers in response  
 40 ~~to a department of social and rehabilitation services agency request,~~  
 41 ~~the director shall designate in writing a full-time employee of an agency~~  
 42 ~~other than the department of social and rehabilitation services requesting~~  
 43 ~~agency to serve as presiding officer for the proceeding, but only with the~~

The director shall be in the unclassified  
 service under the Kansas civil service act.  
 (Revisor error)

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1 consent of the employing agency. The designee must possess the same  
2 qualifications required of presiding officers employed by the office.

3 (d) The director may furnish presiding officers on a contract basis to  
4 any governmental entity to conduct any proceeding not subject to the  
5 Kansas administrative procedure act ~~or not listed in K.S.A. 77-551 and~~  
6 ~~amendments thereto.~~

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

8 (1) To establish procedures for agencies to request and for the di-  
9 rector to assign presiding officers. ~~The department of social and rehabil-~~  
10 ~~itation services~~ An agency may neither select nor reject any individual  
11 presiding officer for any proceeding except in accordance with the Kansas  
12 administrative procedure act;

13 (2) to establish procedures and adopt forms, consistent with the Kan-  
14 sas administrative procedure act, the model rules of procedure, and other  
15 provisions of law, to govern presiding officers; and

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

18 (f) The director may implement the provisions of this section and  
19 rules and regulations adopted under its authority.

20 (g) The secretary of administration may adopt rules and regulations  
21 to establish fees to charge a state agency for the cost of using a presiding  
22 officer.

23 (h) Effective July 1, 1998, personnel in the administrative hearings  
24 section of the department of social and rehabilitation services and support  
25 personnel for such presiding officers, shall be transferred to and shall  
26 become employees of the office of administrative hearings. Such person-  
27 nel shall retain all rights under the state personnel system and retirement  
28 benefits under the laws of this state which had accrued to or vested in  
29 such personnel prior to the effective date of this section. Such person's  
30 services shall be deemed to have been continuous. All transfers of per-  
31 sonnel positions in the classified service under the Kansas civil service act  
32 shall be in accordance with civil service laws and any rules and regulations  
33 adopted thereunder. This act shall not affect any matter pending before  
34 an administrative hearing officer at the time of the effective date of the  
35 transfer, and such matter shall proceed as though no transfer of employ-  
36 ment had occurred.

37 (i) Effective July 1, 1999, ~~personnel~~ in the administrative hearings  
38 section of all agencies, and support personnel for such presiding officers,  
39 shall be transferred to and shall become employees of the office of admin-  
40 istrative hearings. Such personnel shall retain all rights under the state  
41 personnel system and retirement benefits under the laws of this state  
42 which had accrued to or vested in such personnel prior to the effective  
43 date of this section. Such person's services shall be deemed to have been

any presiding officer

which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto,

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

7 Sec. 31. On and after July 1, 1999, K.S.A. 75-6207 is hereby  
8 amended to read as follows: 75-6207. (a) If the director receives a timely  
9 written request for a hearing under K.S.A. 75-6206 and amendments  
10 thereto, the director shall request the secretary of administration to ap-  
11 point a presiding officer from the office of administrative hearings who  
12 shall hold a hearing in accordance with the provisions of the Kansas ad-  
13 ministrative procedure act to determine whether the debt claim is valid.  
14 Subject to the provisions of subsection (b), the presiding officer shall  
15 determine whether the claimed sum asserted as due and owing is correct,  
16 and if not, shall order an adjustment to the debt claim which shall be  
17 forwarded to the director and to the state agency, foreign state agency or  
18 municipality to which the debt is owed. No issue may be considered at  
19 the hearing which has been previously litigated and no collateral attack  
20 on any judgment shall be permitted at the hearing. The order of the  
21 presiding officer shall inform the debtor of the amount determined as  
22 due, if any, and that setoff procedures have been ordered to proceed in  
23 accordance with this act. If the setoff is to be made against earnings of  
24 the debtor, the order shall include a statement that the setoff may be  
25 postponed in accordance with K.S.A. 75-6208 and amendments thereto.  
26 Orders under this section shall not be subject to administrative review.

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

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

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

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



1 the debt; and (3) any party the district court permits to intervene in the  
2 action. Applications for a stay or other temporary remedies shall be to  
3 the district court.

4 Sec. 32. On and after July 1, 1999, K.S.A. 76-3106 is hereby  
5 amended to read as follows: 76-3106. (a) The KPR board is hereby au-  
6 thorized to adopt rules and regulations not in conflict with law on any  
7 and all matters within its jurisdiction.

8 (b) The KPR board shall have the power and authority to conduct  
9 investigations and hearings relating to any matter arising under this act  
0 or rules and regulations adopted by the KPR board.

1 (c) For the purpose of any investigation or hearing which the KPR  
2 board conducts or causes to be conducted, the board or any ~~hearing of-~~  
3 ~~ficer appointed pursuant to this act~~ *presiding officer from the office of*  
4 *administrative hearings* shall have power to administer oaths, take dep-  
5 ositions, and issue subpoenas to compel the attendance of witnesses and  
6 the production of books, papers, documents and testimony. If any person  
7 refuses to obey any subpoena so issued, or refuses to testify or produce  
8 any books, papers, or documents, the KPR board, any member thereof,  
9 or any ~~hearing presiding officer appointed pursuant to this act~~ may pre-  
0 sent a petition to the district court of the judicial district in which any  
1 investigation or hearing is being conducted, setting forth the facts, and  
2 thereupon the court, in a proper case, shall issue its subpoena to such  
3 person, requiring attendance before the court and there to testify or to  
4 produce such books, papers and documents as may be deemed necessary  
5 and pertinent by the KPR board or ~~hearing presiding officer~~. Any person  
6 failing or refusing to obey the subpoena or order of the district court may  
7 be proceeded against for contempt in the same manner as for refusal to  
8 obey any other subpoena or order of the court. Hearings before the KPR  
9 board shall be conducted in accordance with the provisions of the Kansas  
0 administrative procedure act.

1 Sec. 33. On and after July 1, 1999, K.S.A. 76-3110 is hereby  
2 amended to read as follows: 76-3110. (a) The KPR board may initiate a  
3 proceeding to effect termination of a postsecondary institution's partici-  
4 pation in federal student aid programs by serving written notice upon the  
5 institution that the board has determined that the institution should not  
6 be eligible for participation in such programs. The notice shall include a  
7 statement of the reasons for the determination and a statement that the  
8 institution may contest the finding before a ~~hearing presiding officer~~ upon  
9 written request filed with the KPR board. The request to be heard must  
0 led within 15 days from the date of the notice of the board's deter-  
1 mination. Upon receipt of a request by an institution to be heard, the  
2 KPR board shall notify the secretary of human resources that the ap-  
3 pointment of a ~~hearing presiding officer~~ is required. Within 10 days after

1 receipt of notification from the KPR board, the secretary of human re-  
2 sources shall ~~appoint~~ *request a hearing presiding officer from a list, which*  
3 ~~shall be compiled and maintained by the secretary of human resources,~~  
4 ~~of impartial persons who are representative of the public and who are~~  
5 ~~qualified to serve as hearing officers.~~

6 (b) Any hearing requested by a postsecondary institution as provided  
7 in subsection (a) shall be commenced within 15 calendar days after the  
8 ~~hearing presiding officer is appointed~~ *requested* and shall be conducted  
9 in accordance with the provisions of the Kansas administrative procedure  
10 act. Within 30 days after close of the hearing, the ~~hearing presiding~~ *hearing presiding* officer  
11 shall render a written opinion setting forth the ~~hearing presiding~~ *hearing presiding* officer's  
12 findings of fact and recommendation as to the determination of the mat-  
13 ter. The opinion shall be submitted to the KPR board and to the post-  
14 secondary institution. If, after receipt of the ~~hearing presiding~~ *hearing presiding* officer's  
15 opinion, the KPR board concludes that the board's determination that  
16 the institution should not be eligible for participation in federal student  
17 aid programs was warranted, the board shall notify the institution and the  
18 secretary of education of the determination and the reasons therefor.

19 Sec. 34. K.S.A. 77-514, as amended by section 92 of chapter 182 of  
20 the 1997 Session Laws of Kansas, is hereby amended to read as follows:  
21 77-514. (a) The agency head, one or more members of the agency head,  
22 ~~an administrative law judge or a presiding officer~~ assigned by the office  
23 of administrative hearings, or, unless prohibited by K.S.A. 77-551, and  
24 amendments thereto, one or more other persons designated by the  
25 agency head may be the presiding officer.

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

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

33 (d) A person whose disqualification is requested shall determine  
34 whether to grant the petition, stating facts and reasons for the determi-  
35 nation.

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

40 (f) If the office of administrative hearings cannot provide a presiding  
41 r, a state agency may enter into agreements with another state  
42 cy to provide presiding officers to conduct proceedings under this  
43 act.

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

6 Sec. 35. On and after July 1, 1999, K.S.A. 77-514, as amended by  
 7 section 34 of this act, is hereby amended to read as follows: 77-514. (a)

8 ~~The agency head, one or more members of the agency head or a presiding  
 9 officer assigned by the office of administrative hearings; or, unless pro-  
 10 hibited by K.S.A. 77-551, and amendments thereto, one or more other  
 11 persons designated by the agency head may shall be the presiding officer.~~

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

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

19 (d) A person whose disqualification is requested shall determine  
 20 whether to grant the petition, stating facts and reasons for the determi-  
 21 nation.

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

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

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

35 Sec. 36. On and after July 1, 1999, K.S.A. 77-549 is hereby amended  
 36 to read as follows: 77-549. (a) The filing of a return with the director of  
 37 taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of  
 38 the Kansas Statutes Annotated, and amendments thereto, shall not be  
 39 deemed an application for an order under the Kansas administrative pro-  
 40 ceedure act.

41 (b) A determination by the division of taxation or the audit services  
 42 bureau of the department of revenue concerning tax liability under article  
 43 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes

— Except as provided in subsection (b) of K.S.A.  
 77-551 and amendments thereto,

1 Annotated, and amendments thereto, which is made prior to the oppor-  
2 tunity for a hearing or prior to the opportunity for an informal conference  
3 before the secretary or the secretary's designee on such tax liability, shall  
4 not require an adjudicative proceeding under the Kansas administrative  
5 procedure act.

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

10 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,  
11 and amendments thereto, shall be rendered in writing and served within  
12 120 days after conclusion of the hearing or after submission of proposed  
13 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-  
14 ments thereto, unless this period is waived or extended with the written  
15 consent of all parties or for good cause shown. If extended for good cause,  
16 such good cause shall be set forth in writing on or before the expiration  
17 of the 120 days.

18 Sec. 37. On and after July 1, 1999, K.S.A. 77-550 is hereby amended  
19 to read as follows: 77-550. For purposes of administrative proceedings of  
20 the division of property valuation under the Kansas administrative pro-  
21 cedure act, the secretary of revenue may designate the director of the  
22 division of property valuation or ~~other designee~~ *a presiding officer from*  
23 *the office of administrative hearings* as agency head.

24 Sec. 38. K.S.A. 77-551 is hereby amended to read as follows: 77-551.  
25 On and after July 1, 1998: (a) In hearings of the department of social and  
26 rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,  
27 75-3306 and 75-3340, and amendments thereto, the presiding officer shall  
28 be the agency head, one or more members of the agency head or ~~an~~  
29 ~~administrative law judge~~ *a presiding officer* assigned by the office of ad-  
30 ministrative hearings.

31 (b) This section shall be part of and supplemental to the Kansas ad-  
32 ministrative procedure act.

33 Sec. 39. On and after July 1, 1999, K.S.A. 77-551, as amended by  
34 section 38 of this act, is hereby amended to read as follows: 77-551. ~~On~~  
35 ~~and after July 1, 1998:~~ (a) ~~In all hearings of the department of social and~~  
36 ~~rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,~~  
37 ~~75-3306 and 75-3340, and amendments thereto, any state agency that~~  
38 ~~are required to be conducted in accordance with the provisions of the~~  
39 ~~Kansas administrative procedure act, the presiding officer shall be the~~  
40 ~~cy head, one or more members of the agency head or a presiding~~  
41 ~~er assigned by the office of administrative hearings.~~

42 (b) ~~This section shall be part of and supplemental to the Kansas ad-~~  
43 ~~ministrative procedure act.~~

Except as provided in subsection (b),

The provisions of this section shall not apply to the employment security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532 and 44-5,120 and amendments thereto, concerning the workers compensation act.

(c)

1 Sec. 40. On and after July 1, 1999, K.S.A. 79-3313 is hereby  
2 amended to read as follows: 79-3313. All cigarettes sold in this state shall  
3 be in packages, and each of the packages shall bear evidence of payment  
4 of the tax thereon except that any railroad or sleeping car company li-  
5 censed as a retailer is hereby authorized to sell cigarettes upon its cars  
6 without affixing stamps to the packages of cigarettes provided that  
7 monthly reports and payment of the tax due is made directly to the di-  
8 rector in the manner and under the terms provided for by the director.  
9 In addition, manufacturers are hereby authorized to distribute in the  
10 state, through their authorized representatives or wholesale dealers, free  
11 sample packages of cigarettes containing less than 20 cigarettes without  
12 affixing stamps to the packages provided that monthly reports and pay-  
13 ment of a tax at the rates prescribed by law are made directly to the  
14 director. No wholesale dealer or manufacturers' authorized representa-  
15 tives shall sell or distribute cigarettes, except free sample packages, to  
16 any person in the state of Kansas not holding a dealer's license as provided  
17 in this act. Such packages of sample cigarettes shall bear the word "sam-  
18 ple" or "not for sale" and "state tax paid" in letters easily read.

19 Whenever the director shall have reason to believe that any manufactur-  
20 er has violated the provisions of this section or the conditions provided  
21 by the director, the director shall conduct a hearing thereon in accordance  
22 with the provisions of the Kansas administrative procedure act in the  
23 office of the director at Topeka. If upon the basis of such hearing it  
24 appears to the satisfaction of the director that such manufacturer has  
25 violated any of the provisions of this section or the conditions provided  
26 by the director, the director is hereby authorized to suspend or revoke  
27 the authorization to the manufacturer for such period as the director  
28 determines is necessary but in no case for more than one year.

29 Sec. 41. On and after July 1, 1999, K.S.A. 82a-1405 is hereby  
30 amended to read as follows: 82a-1405. (a) At the direction of the authority,  
31 the director may issue licenses for weather modification activities, as pro-  
32 vided for in this act, but any licensee shall be limited in the exercise of  
33 activities under the license to the specified method or methods of weather  
34 modification activity within the area of expertise of the licensee.

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

- 39 (1) The geographic area within which such activities are to be carried  
40 out;
- 41 (2) the geographic area to be affected; and
- 42 (3) the duration of the weather modification activities of the project  
43 or program, which period may be noncontinuous but which may not have

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1 a total duration exceeding one calendar year from the day of its issuance.

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

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

9 The director may ~~appoint a hearing officer~~ use a *presiding officer from*  
10 *the office of administrative hearings* to conduct any hearings required by  
11 this act. The hearings shall be conducted under the provisions and within  
12 any limitations of rules and regulations adopted by the authority.

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

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

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

22 (3) the protection of life, health, property and the general environ-  
23 ment.

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

29 (1) For the administration of this act;

30 (2) to encourage research and development projects by public or pri-  
31 vate agencies through grants, contracts or cooperative arrangements;

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

35 (f) Under the direction of the authority, the director shall represent  
36 the state in matters pertaining to plans, procedures, or negotiations for  
37 cooperative agreements, or intergovernmental arrangements relating to  
38 weather modification.

39 Sec. 42. On and after July 1, 1999, K.S.A. 82a-1501a is hereby  
40 amended to read as follows: 82a-1501a. (a) The water transfer hearing  
41 panel shall consist of the chief engineer, the director and the secretary.  
42 The chief engineer shall serve as chairperson of the panel. All actions of  
43 the panel shall be taken by a majority of the members. The panel shall

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1 have all powers necessary to implement the provisions of this act.

2 (b) The panel shall select a hearing officer request a presiding officer  
3 from the office of administrative hearings to conduct a hearing in accor-  
4 dance with this act when: (1) An application for a water transfer is com-  
5 plete; or (2) the chief engineer, or the panel by a majority vote which  
6 includes the vote of the chief engineer, determines it to be in the best  
7 interest of the state to conduct a water transfer hearing on an application  
8 for a permit to appropriate water or an application for a change to an  
9 existing water right pursuant to the Kansas water appropriation act or on  
10 a proposed contract for the sale of water from the state's conservation  
11 storage water supply capacity, even though the appropriation or sale  
12 would not be a water transfer as defined by K.S.A. 82a-1501 and amend-  
13 ments thereto.

14 (e) The hearing officer shall be an independent person knowledg-  
15 eable in water law, water issues and hearing procedures. The hearing officer  
16 shall be a presiding officer for the purposes of the Kansas administrative  
17 procedure act. Subject to approval by the panel, the hearing officer, on  
18 behalf of the state, may employ such personnel and contract for such  
19 services and facilities as necessary to carry out the hearing officer's duties.  
20 under this act.

21 Sec. 43. On and after July 1, 1999, K.S.A. 82a-1502 is hereby  
22 amended to read as follows: 82a-1502. (a) No person shall make a water  
23 transfer in this state unless and until the transfer is approved pursuant to  
24 the provisions of this act. No water transfer shall be approved which  
25 would reduce the amount of water required to meet the present or any  
26 reasonably foreseeable future beneficial use of water by present or future  
27 users in the area from which the water is to be taken for transfer unless:  
28 (1) The panel determines that the benefits to the state for approving the  
29 transfer outweigh the benefits to the state for not approving the transfer;  
30 (2) the chief engineer recommends to the panel and the panel concurs  
31 that an emergency exists which affects the public health, safety or welfare;  
32 or (3) the governor has declared that an emergency exists which affects  
33 the public health, safety or welfare. Whenever an emergency exists, a  
34 water transfer may be approved by the panel on a temporary basis for a  
35 period of time not to exceed one year under rules and regulations adopted  
36 by the chief engineer. The emergency approval shall be subject to the  
37 terms, conditions and limitations specified by the panel.

38 (b) No water transfer shall be approved under the provisions of this  
39 act: (1) If such transfer would impair water reservation rights, vested  
40 rights, appropriation rights or prior applications for permits to appropriate  
41 water; and (2) unless the hearing presiding officer determines that the  
42 applicant has adopted and implemented conservation plans and practices  
43 that (A) are consistent with the guidelines developed and maintained by

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1 the Kansas water office pursuant to K.S.A. 74-2608 and amendments  
2 thereto, (B) have been in effect for not less than 12 consecutive months  
3 immediately prior to the filing of the application on which the hearing is  
4 being held and (C) if the transfer is for use by a public water supply  
5 system, include the implementation of a rate structure which encourages  
6 the efficient use of water that is determined by the *hearing presiding*  
7 officer to be effective and if designed, implemented and maintained prop-  
8 erly, will result in wise use and responsible conservation and management  
9 of water used by the system.

10 (c) To determine whether the benefits to the state for approving the  
11 transfer outweigh the benefits to the state for not approving the transfer,  
12 the *hearing presiding* officer shall consider all matters pertaining thereto,  
13 including specifically:

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

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

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

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

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

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

28 (7) the effectiveness of conservation plans and practices adopted and  
29 implemented by the applicant and any other entities to be supplied water  
30 by the applicant;

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

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

38 Sec. 44. On and after July 1, 1999, K.S.A. 82a-1503 is hereby  
39 amended to read as follows: 82a-1503. (a) Any person desiring to make a  
40 water transfer shall file with the chief engineer an application in the form  
41 required by rules and regulations adopted by the chief engineer. If the  
42 chief engineer finds the application to be insufficient to enable the chief  
43 engineer to determine the source, nature and amount of the proposed



1 transfer, or if the application is not complete, the application shall be  
2 returned for correction or completion or for any other necessary infor-  
3 mation.

4 (b) The ~~hearing~~ *presiding* officer shall commence the hearing process  
5 by giving notice of the prehearing conference not more than 14 days after  
6 the panel ~~employs the hearing~~ *is assigned a presiding* officer. Such notice  
7 shall be given by mail to the applicant, any other parties who have inter-  
8 vened and the appropriate commenting agencies and shall be published  
9 in the Kansas register and in at least two newspapers having general cir-  
10 culation in the area where the proposed point of diversion is located. The  
11 ~~hearing~~ *presiding* officer shall hold a prehearing conference which shall  
12 commence not less than 90 and not more than 120 days after the required  
13 notice has been given and shall conclude not later than 45 days after  
14 commencement. Not less than 90 and not more than 120 days after the  
15 conclusion of the prehearing conference, the ~~hearing~~ *presiding* officer  
16 shall commence a formal public hearing. The formal public hearing shall  
17 be held in the basin of origin and, if deemed necessary by the ~~hearing~~  
18 *presiding* officer, a public comment hearing shall be held in the basin of  
19 use. The formal public hearing shall conclude not later than 120 days  
20 after commencement and the initial order of the ~~hearing~~ *presiding* officer  
21 approving or disapproving the water transfer shall be issued not later than  
22 90 days after conclusion of the formal public hearing. The ~~hearing~~ *pre-*  
23 *siding* officer may extend a time limit provided by this subsection, but  
24 only with the written consent of all parties or for good cause shown.

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

29 (d) Any person shall be permitted to appear and testify at any hearing  
30 under this act upon the terms and conditions determined by the ~~hearing~~  
31 *presiding* officer.

32 (e) At intervals during or at the conclusion of the hearing, the ~~hearing~~  
33 *presiding* officer shall fairly and equitably assess the following costs of the  
34 hearing among the applicant and other parties: The hearing facility, the  
35 court reporter, the salary of a ~~hearing~~ *presiding* officer who is not paid  
36 for services as a ~~hearing~~ *presiding* officer by state funds, the travel ex-  
37 penses of the ~~hearing~~ *presiding* officer and other reasonable costs asso-  
38 ciated with the hearing. The ~~hearing~~ *presiding* officer may assess any or  
39 all anticipated costs to the applicant before the hearing and subsequently  
40 may assess other parties for the parties' fair and equitable portion of the  
41 anticipated costs assessed the applicant. Amounts assessed pursuant to  
42 this subsection shall be paid to the chief engineer. Upon receipt thereof,  
43 the chief engineer shall remit the entire amount to the state treasurer.

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1 The state treasurer shall deposit the entire amount in the state treasury  
2 and credit it to the water transfer hearing fund established by subsection  
3 (f).

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

6 (2) Moneys credited to the water transfer hearing fund shall be used  
7 only to pay: (A) Costs of hearings conducted pursuant to the water trans-  
8 fer act; (B) reimbursement of the applicant for anticipated costs assessed  
9 the applicant and subsequently assessed other parties; and (C) refunds of  
10 unused moneys assessed as anticipated costs before the hearing. Expend-  
11 itures from such fund shall be made in accordance with appropriation  
12 acts upon warrants of the director of accounts and reports, or a person  
13 designated by the director of accounts and reports pursuant to K.S.A. 75-  
14 3732 and amendments thereto, issued pursuant to vouchers approved by  
15 the chief engineer, or a person designated by the chief engineer.

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

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

21 (B) the net earnings rate for the pooled money investment portfolio  
22 for the preceding month.

23 Sec. 45. On and after July 1, 1999, K.S.A. 82a-1504 is hereby  
24 amended to read as follows: 82a-1504. (a) The ~~hearing~~ *presiding* officer  
25 shall render an order either approving or disapproving the proposed water  
26 transfer. The ~~hearing~~ *presiding* officer's order shall include findings of  
27 fact relating to each of the factors set forth in subsection (c) of K.S.A.  
28 82a-1502 and amendments thereto. The ~~hearing~~ *presiding* officer may  
29 order approval of a transfer of a smaller amount of water than requested  
30 upon such terms, conditions and limitations as the ~~hearing~~ *presiding* of-  
31 ficer deems necessary for the protection of the public interest of the state  
32 as a whole.

33 (b) An order of the ~~hearing~~ *presiding* officer disapproving or approv-  
34 ing a water transfer, in whole or in part, shall be deemed an initial order.  
35 The panel shall be deemed the agency head for the purpose of the Kansas  
36 administrative procedure act and shall review all initial orders of the ~~hear-~~  
37 ~~ing~~ *presiding* officer in accordance with the Kansas administrative pro-  
38 cedure act. Review by the panel shall be in accordance with the standards  
39 provided by this act for the ~~hearing~~ *presiding* officer's initial order and  
40 shall be based on the record of the hearing. The final order of the panel  
41 shall be entered not later than 90 days after entry of the ~~hearing~~ *presiding*  
42 officer's initial order, except that the panel may extend the 90-day limit,  
43 but only with the written consent of all parties or for good cause shown.

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

4 (d) The record of any hearing or other proceeding held pursuant to  
5 this act shall be maintained and make available for public examination in  
6 the office of the chief engineer.

7 Sec. 46. K.S.A. 75-37,121, 77-514, as amended by section 92 of chap-  
8 ter 182 of the 1997 Session Laws of Kansas, and 77-551 are hereby re-  
9 pealed.

10 Sec. 47. On and after July 1, 1999, K.S.A. 2-1208a, 2-3311, 8-2426,  
11 21-3110, 31-140, 36-509, 40-2,137, 44-322a, 49-606, 65-163a, 65-673, 65-  
12 720a, 65-747, 65-753, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117,  
13 75-37,121, as amended by section 29 of this act, 75-5611a, 75-6207, 76-  
14 3106, 76-3110, 77-514, as amended by section 34 of this act, 77-549,  
15 77-550, 77-551, as amended by section 38 of this act, 79-3313, 82a-1405,  
16 82a-1501a, 82a-1502, 82a-1503, and 82a-1504 and K.S.A. 1997 Supp. 44-  
17 1005, 65-163, 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and  
18 74-8837 are hereby repealed.

19 Sec. 48. This act shall take effect and be in force from and after its  
20 publication in the statute book.

## HOUSE BILL No. 2672

By Joint Committee on Administrative Rules and Regulations

1-20

9 AN ACT concerning the secretary of the department on aging; relating  
10 to the powers and duties thereof.

11

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

13 Section 1. (a) Except as provided by subsection (c), all proceedings  
14 conducted, orders issued and actions taken by the secretary of the de-  
15 partment on aging or the secretary's designee shall be conducted in ac-  
16 cordance with the provisions of the Kansas administrative procedure act.

17 (b) Except as provided by subsection (c), all proceedings conducted,  
18 orders issued and actions taken by the secretary of the department on  
19 aging or the secretary's designee shall be subject to review in accordance  
20 with the act for judicial review and civil enforcement of agency actions.

21 (c) The provisions of this section shall apply to all proceedings con-  
22 ducted, orders issued and actions taken by the secretary of the depart-  
23 ment on aging or the secretary's designee pursuant to any program ad-  
24 ministered by the secretary other than a medicaid program administered  
25 pursuant to K.S.A. 75-5321a, 75-5945 and K.S.A. 1997 Supp. 39-968, *et*  
26 *seq.*, and amendments thereto.

27 Sec. 2. This act shall take effect and be in force from and after its  
28 publication in the statute book.

a presiding  
officer from the  
office of administrative  
hearings

House Judiciary  
3-23-98  
Attachment 5