

Approved: 2-1-99
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 14, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative Tim Carmody - Excused
Representative John Edmonds - Excused
Representative Tony Powell - Excused
Representative Clark Shultz - Excused
Representative Dale Swenson - Excused

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statute
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Larry Woodward, Kansas Parole Board
Terry Leatherman, Kansas Chamber of Commerce and Industry
Randy Hearrell, Kansas Judicial Council
Kathy Porter, Office of Judicial Administration
Ron Smith, Kansas Bar Association
Nancy Lindberg, Office of Attorney General

Larry Woodward, Kansas Parole Board, appeared before the committee with a bill request which would reduce the Kansas Parole Board to three full-time members effective July 1, 1999. (Attachment 1)

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

Terry Leatherman, Kansas Chamber of Commerce and Industry, appeared before the committee with a bill request which would protect businesses from legal liability due to the "Y2K bug". (Attachment 2)

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

Randy Hearrell, Kansas Judicial Council, appeared before the committee with five bill requests regarding: amendments to the Kansas Administrative Procedure Act relating to Officer of Administrative hearings, amendments to the Kansas Eminent Domain Act, amendments to the Kansas Estate Tax Act, amendments to the Kansas Code of Criminal Procedure relating to Grants of Immunity and an amendment to K.S.A. 59-606 relating to Self-Proved Wills. (Attachment 3)

Representative Pauls made a motion to have the requests introduced as committee bills. Representative Klein seconded the motion. The motion carried.

Kathy Porter, Office of Judicial Administration, appeared before the committee with five bill requests dealing with: opening presentencing investigations in misdemeanor cases, providing for a 12 member jury and six peremptory challenges for both parties in sexually violent predator proceedings, amending the title of "Administrative Judge" to "Chief Judge", provide that debt collection be added to court costs, fines attorney reimbursement fees, and other charges which a court has ordered to be paid, and amendments to confidentiality of proceedings statute. (Attachment 4)

Representative Long made a motion to have the requests introduced as committee bills. Representative Adkins seconded the motion. The motion carried.

Ron Smith, Kansas Bar Association, appeared before the committee with three bill requests. The first would amend K.S.A. 38-1522, 39-1402 & 39-1431 so that when a person has a dual license and are practicing law, the reporting requirement does not apply. The second would be the to introduce the Uniform Child Custody Jurisdiction and Enforcement Act and the last request dealt with the new Limited Liability Company Code. (Attachment 5)

Representative Crow made a motion to have the requests introduced as committee bills. Representative Long seconded the motion. The motion carried.

Nancy Lindberg, Office of Attorney General, appeared before the committee with three bill requests. One would amend the sexually violent predator commitment to provide for additional changes in accord with the parameters approved by the United States Supreme Court. The next would increase the severity level of abuse from a level 6 person felony to level 5, and the last would provide for a five year statute of limitations on all crimes other than murder, which can be commenced at any time and crimes which the Kansas public employees retirement system is a victim. (Attachment 6)

Representative Adkins made a motion to have the requests introduced as committee bills. Representative Long seconded the motion. The motion carried.

Staff provided the committee with an overview of the Special Committee on Judiciary interim reports. (Copies of *Committee Reports to the 1999 Kansas Legislature* can be obtained by contacting Kansas Legislative Research Department.)

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for January 19, 1999.

Mar.
Chair

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

Teresa L. Saiya
Administrator

DATE: January 12, 1999

TO: Michael O'Neal, Chairperson
House Judiciary Committee

FROM: Marilyn Scafe, Chairperson
Kansas Parole Board

RE: Kansas Parole Board Proposed Legislation

AGENCY

Kansas Parole Board

Proposal #1 - Reduction of the Membership of the KPBB; Use of KDOC Personnel as Hearing Officers

PROPOSAL SUMMARY

The Board proposes that the membership of the Kansas Parole Board (KPBB) be reduced to consist of three full-time Board Members effective July 1, 1999. This is a reduction of one Board Member from the agency's current staffing. In conjunction with the reduction of the membership of the Board, the number of members who must vote for the release of an offender convicted of a class A or B felony or off-grid crime would be by two votes of the KPBB. Currently, three of the four members must vote to grant such a parole.

The Board proposes that the governor be authorized to appoint a qualified person as a member pro tem of the KPBB to act in the place of a member of the KPBB for good cause shown or in any case of a conflict of interest or when absence, sickness or disability of such member of the KPBB occurs. Currently, no measures exist for a member pro tem to be appointed.

In order for the Board to carry out its duties with three members, the Board proposes that it be allowed to designate hearing officers. Such hearing officers would be qualified employees of the Kansas Department of Corrections and referrals to those hearing officers would be in accordance with the rules and regulations of the KPB. Currently, no mechanism exists for the utilization of hearing officers.

FISCAL IMPACT

The reduction in the membership of the Board would result in the savings of the salary and benefits paid to a member of the Board. The utilization of KDOC personnel to conduct hearings on behalf of the Board would be accomplished through existing professional staff. Therefore, little, if any impact will occur other than incidental expenses such as travel and per diem.

In regard to the compensation for pro tem members, the existing budget allocation can be utilized as needed. However, in the event of a long term illness or disability of one or more KPB members (who may continue to receive compensation through use of sick/annual leave) it may become necessary to seek additional funding.

POLICY IMPLICATIONS AND IMPACT ON AGENCY STRATEGIC PLAN

This proposal would allow the utilization of qualified professional staff members to act as hearing officers for the KPB. These hearing officers would make recommendations to the KPB regarding if and under what circumstances offenders would be released. The KPB would still retain the ultimate authority and discretion in making decisions regarding parole.

Allowing the governor to appoint pro tem members would provide a safety net for the KPB to carry out its statutory duties in the event a member becomes ill, disabled or has a conflict of interest in a case.

cc: file

Statistical Information

The previously listed items are all duties of the Kansas Parole Board. Below, please find the number of Board actions for Fiscal Years 1996, 1997 and 1998 as well as the projections for Fiscal Years 1999 and 2000 for some of the Board's duties:

	FY96 Actual	FY97 Actual	FY98 Actual	FY99 Estimated	FY2000 Estimated
Parole Hearings	3,235	2,765	2,259	2,033	1,931
Parole Violator Hearings	1,701	1,884	2,079	2,244	2,244
Total Hearings	4,936	4,649	4,338	4,277	4,175
Public Comment Sessions	36	36	36	36	36
File Reviews*	2,587	4,676	4,790	4,885	5,129

*File reviews include setting conditions of parole, conditional release and post release supervision as well as decisions regarding clemency recommendations and early discharges.

Inmates Under "Old Law" as of June 30th, 1998 (End of FY 1998)*

6/30/95 (actual)	6/30/96 (actual)	6/30/97 (actual)	6/30/98 (actual)	6/30/99 (projected)	6/30/2000 (projected)	6/30/2001 (projected)
4802	4424	3929	3486	3247	2427	2000

*Numbers provided by the Sentencing Commission

January 14, 1999

Representative Michael O'Neal, Chairman
Kansas House Judiciary Committee
Kansas Statehouse
Topeka, KS 66612

Chairman O'Neal,

The Kansas Chamber of Commerce and Industry would appreciate the Kansas House Judiciary Committee consider the introduction of legislation concerning the potential legal liability businesses in our state might face due to the "Y2K bug."

It is anticipated that significant technology challenges will face Kansas employers on January 1, 2000, due to the failure of some computing systems to understand the year 2000. KCCI's legislative request would address the potential for widespread litigation if the Y2K bug produces the problems some today predict. Along with the Kansas Chamber, several other state trade associations would appreciate legislative review of this important policy matter.

Thank you for considering the Kansas Chamber's request for the introduction of legislation. If I can be of assistance or provide additional information, please give me a call.

Sincerely,

Terry Leatherman
Executive Director
Kansas Industrial Council

House Judiciary
1-14-99
Attachment 2

**LEGISLATION REQUESTED
BY KANSAS JUDICIAL COUNCIL
FOR INTRODUCTION IN HOUSE**

<u>Description</u>	<u>Item No.</u>
Amendments to Kansas Administrative Procedure Act relating to Office of Administrative Hearings	1
Amendments to the Kansas Eminent Domain Act	2
Amendments to the Kansas Estate Tax Act	3
Amendments to the Kansas Code of Criminal Procedure relating to Grants of Immunity	4
Amendment to K.S.A. 59-606 relating to Self-Proved Wills	5

PROPOSED BILL NO. _____

By

ITEM #1

AN ACT concerning administrative procedure; concerning presiding officers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-509, 40-2,137, 44-322a, 49-606, 65-163a, 65-673, 65-720a, 65-747, 65-753, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117, 75-37,121, 75-37,121, as amended by section 34 of this act, 75-37,121, as amended by section 35 of this act, 75-37,121, as amended by section 36 of this act, 75-37,121, as amended by section 37 of this act, 75-37,122, 75-6207, 76-3110, 77-505, 77-549, 77-550, 77-551, 77-551, as amended by section 47 of this act, 79-3313, 82a-1405, 82a-1501a, 82a-1502, 82a-1503 and 82a-1504 and K.S.A. 1998 Supp. 44-1005, 65-163, 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 77-514 and 77-514 as amended by section 43 of this act and repealing the existing sections; also repealing K.S.A. 75-5611a.

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

New Section 1. On and after July 1, 2003: (a) Except as otherwise provided by this act, all of the powers, duties and functions of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act are hereby transferred to and conferred and imposed upon the office of administrative hearings and the director established by this act.

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

(c) Except as otherwise provided by this act, whenever the office of administrative hearings within the department of administration and the secretary of administration, or words of like effect concerning adjudicative proceedings of the Kansas administrative procedure act, is referred to or designated by a statute, contract or other document, such reference or

designation shall be deemed to apply to the office of administrative hearings established by this act.

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

(e) All rules and regulations of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in existence on the effective date of this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the director of the office of administrative hearings established by this act until revised, amended, revoked or nullified pursuant to law.

(f) All orders and directives of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in existence on the effective date of this section shall continue to be effective and shall be deemed to be orders and directives of the director of the office of administrative hearings established by this act until revised, amended or nullified pursuant to law.

(g) On the effective date of this section, the director of the office of administrative hearings established by this act shall succeed to whatever right, title or interest the department of administration has acquired in any real property in this state concerning adjudicative proceedings of the Kansas administrative procedure act, and the director of the office of administrative hearings shall hold the same for and in the name of the state of Kansas. On and after the effective date of this section, whenever any statute, contract, deed or other document concerns the power or authority of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act to acquire, hold or dispose of real property or any interest therein, the office of administrative hearings and the director as established by this act shall succeed to such power or authority.

(h) The office of administrative hearings and the director established by this act shall be continuations of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act.

New Sec. 2. Except as otherwise provided in this act, on July 1, 2003, any presiding officer in the administrative hearings section of all agencies which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to

and shall become employees of the office of administrative hearings established under this act. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

New Sec. 3. On and after July 1, 2003:

(a) When any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

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

New Sec. 4. On and after July 1, 2003:

(a) The office of administrative hearings shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act and any agency or office transferred thereto under this act.

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

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

New Sec. 5. (a) On and after July 1, 2003, the balance of all funds appropriated and reappropriated to the office of administrative hearings within the department of administration

concerning adjudicative proceedings of the Kansas administrative procedure act is hereby transferred to the office of administrative hearings and shall be used only for the purpose for which the appropriation was originally made.

(b) On and after July 1, 2003, the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act, or who become a part of the office of administrative hearings established by this act, or the powers, duties and functions of which are transferred to the office of administrative hearings provided for by this act, shall be assumed and paid by the office of administrative hearings established by this act.

Sec. 6. On and after July 1, 2002, K.S.A. 2-1208a is hereby amended to read as follows: 2-1208a. (a) If it shall appear to the secretary or an authorized representative of the secretary from examination or analysis of an official sample of a commercial fertilizer that the commercial fertilizer is falsely labeled or fails to comply with the provisions of this act, the secretary shall cause notice to be given to the person in possession of the commercial fertilizer and the registrant that a hearing in relation thereto will be held at a date and place named in such notice. Whereupon the secretary or ~~an authorized representative of the secretary~~ a presiding officer from the office of administrative hearings shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act.

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

Sec. 7. On and after July 1, 2002, K.S.A. 2-3311 is hereby amended to read as follows: 2-3311. Before any chemigation user registration or chemigation user's permit shall be revoked, denied renewal or before it shall be suspended for any cause, the

secretary shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The notice of hearing shall be sent to the registrant or permit holder at least 15 days prior to the hearing date and shall be served upon the registrant or permit holder by letter sent to such person's address as shown by the records of the secretary, setting out the time and place of the hearing and alleged grounds for revocation or suspension. The registrant or permit holder shall have the right to appear in person and by counsel and to testify and introduce evidence. If such person fails to appear, the matter may be heard in such person's absence. Any such hearing may be conducted by the secretary or by a hearing officer duly appointed by the secretary a presiding officer from the office of administrative hearings.

Sec. 8. On and after July 1, 2000, K.S.A. 8-2426 is hereby amended to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any person violating any provision thereof shall be subject to civil penalty of not less than \$350 and not to exceed \$1,000, as determined by the director of vehicles or a person appointed by the director presiding officer from the office of administrative hearings after notice and hearing in accordance with the provisions of the Kansas administrative procedure act. The provisions of this section shall not affect the authority of the secretary of revenue or any officer of the department of revenue in enforcing any provision of the vehicle dealers and manufacturers licensing act, of which K.S.A. 8-2425 and amendments thereto and this section shall be a part.

Sec. 9. On and after July 1, 1999, K.S.A. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- (1) "Act" includes a failure or omission to take action.
- (2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- (3) "Conduct" means an act or a series of acts, and the accompanying mental state.
- (4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- (5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.
- (6) To "deprive permanently" means to:
 - (a) Take from the owner the possession, use or benefit of his or her property, without an intent to restore the same; or
 - (b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
 - (c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the

owner.

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

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

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

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

(11) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

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

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

(14) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(15) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

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

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

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

(19) "Public officer" includes the following, whether elected or appointed:

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

(b) A member of the legislature or of a governing board of a

county, municipality, or other subdivision of or within the state.

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

(d) A hearing officer or presiding officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

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

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

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

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

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

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

(25) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 10. On and after July 1, 2003, K.S.A. 31-140 is hereby amended to read as follows: 31-140. Any person aggrieved by any order or ruling issued pursuant to the provisions of this act may appeal such order or ruling to the state fire marshal within 15 days from the date of the service of such order by filing a notice of such appeal in the office of the state fire marshal. The state fire marshal or ~~the state fire marshal's authorized representative~~ a presiding officer from the office of administrative hearings shall hear such person within 30 days after the receipt of such notice of appeal, and the hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. The state fire marshal shall file a decision thereon and, unless by authority of the state fire marshal the order is revoked or modified, the order shall be complied with within the time fixed in such decision.

Sec. 11. On and after July 1, 2001, K.S.A. 36-509 is hereby amended to read as follows: 36-509. (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the

provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary or a person-designated-by-the-secretary-as-a-hearing-officer presiding officer from the office of administrative hearings may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

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

Sec. 12. On and after July 1, 2003, K.S.A. 40-2,137 is hereby amended to read as follows: 40-2,137. (a) The costs incurred by the department of insurance in conducting any administrative hearing authorized by article 33 of chapter 40 of the Kansas Statutes Annotated and subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A. 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsection (a) of K.S.A. 40-1114 and K.S.A. 40-1120, and amendments thereto, shall be assessed against insurers or rating organizations that are parties to the hearing in such proportion as the commissioner of insurance may determine upon consideration of all relevant circumstances including: (1) The nature of the hearing; (2) whether the hearing was instigated by, or for the benefit of a particular party or parties; (3) whether there is a successful party on the merits of the proceeding; (4) the relative levels of participation by the parties; and (5) with the exception of hearings held under article 33 of chapter 40 of the Kansas Statutes Annotated, only when the disapproval of rates in question is upheld, a rating organization's license is suspended or revoked or a penalty is imposed as a result of the hearing.

(b) For purposes of this section costs incurred shall mean the hearing presiding officer fees, cost of making a record and publishing notices, and travel expenses of department of insurance officers and employees, but costs incurred shall not include hearing presiding officer fees or cost of making a record unless the department has retained the services of independent contractors the office of administrative hearings or outside experts to perform such functions.

(c) Any costs assessed hereunder shall be made by the commissioner as part of the final order or decision arising out of the proceeding. Such order or decision shall include findings and conclusions in support of the assessment of costs. This section shall not be construed as permitting the payment of travel expenses unless calculated in accordance with the applicable laws and rules and regulations of the state of Kansas. The commissioner as part of such order or decision may require

all assessments for hearing presiding officer fees and cost of making a record, if any, to be paid directly to the hearing officer--or--court--reporter office of administrative hearings by the party or parties assessed for such costs.

Sec. 13. On and after July 1, 2002, K.S.A. 44-322a is hereby amended to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the secretary of human resources, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322 and amendments thereto to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or ~~the secretary's authorized representative~~ a presiding officer from the office of administrative hearings shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

(c) Any agency action under this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 14. On and after July 1, 1999, K.S.A. 1998 Supp. 44-1005 is hereby amended to read as follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice, and who can articulate a prima facie case pursuant to a recognized legal theory of discrimination, may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing, articulating the prima facie case, which shall also state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the

name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.

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

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

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

(e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The complainant, respondent and commission shall have 45 days from the date respondent is notified in writing of a

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

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

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

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

(i) Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission on or after July 1, 1996, may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Complaints filed with the commission before July 1, 1996, shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final

action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto. The provisions of this section shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015 et seq. and amendments thereto.

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

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

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

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

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

such other public officers as the commission may deem proper.

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

Sec. 15. On and after July 1, 2002, K.S.A. 49-606 is hereby amended to read as follows: 49-606. (a) The director, with the approval of the commission, may deny issuance or renewal of a license for repeated or willful violation of the provisions of this act or for failure to comply with any provision of a reclamation plan.

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

Sec. 16. On and after July 1, 2001, K.S.A. 1998 Supp. 65-163 is hereby amended to read as follows: 65-163. (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply system permit obtained in a manner similar to that prescribed by this section from the secretary.

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

(3) The secretary may adopt rules and regulations establishing a program of annual certification by public water supply systems that have staff qualified to approve the extension of distribution systems without the necessity of securing an

additional permit for the extension provided the plans for the extension are prepared by a professional engineer as defined by K.S.A. 74-7003, and amendments thereto.

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

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

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

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

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

(4) Whenever complaint is made to the secretary by the mayor of any city of the state, by a local health officer or by a

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

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

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

(f) There is hereby created an advisory committee to make recommendations regarding: (1) Fees to be adopted by the secretary under subsection (e); (2) means of strengthening on-site technical assistance to public water supply systems; (3) standards for on-site and classroom water treatment operator certification programs; (4) other matters concerning public water supplies; and (5) to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c and amendments thereto. Such advisory committee shall consist of one member appointed by the secretary to represent the department of health and environment, one member appointed by the director of the Kansas water office to represent such office and two members appointed by the secretary as follows: One from three nominations submitted by the Kansas section of the American waterworks association, and one from three nominations submitted by the Kansas rural water association. Members of the advisory committee shall serve without compensation or reimbursement of expenses. The advisory committee shall meet at least four times each year on call of the secretary or a majority of the members of the committee.

Sec. 17. On and after July 1, 2001, K.S.A. 65-163a is hereby amended to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead to the contamination of the public water supply system and may continue to refuse the delivery of water to the premises until the condition is remedied.

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

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

Sec. 18. On and after July 1, 2001, K.S.A. 1998 Supp. 65-525 is hereby amended to read as follows: 65-525. Except as otherwise provided in K.S.A. 1998 Supp. 65-531 and amendments thereto, information received by the licensing agency through filed reports, inspections or otherwise authorized under K.S.A. 65-501 to 65-522, inclusive, and amendments thereto shall not be disclosed publicly in such manner as to identify individuals. In any hearings conducted under the licensing or regulation provisions of K.S.A. 65-501 to 65-522, inclusive, and amendments thereto, the hearing presiding officer may close the hearing to the public to prevent public disclosure of matters relating to individuals restricted by other laws.

Sec. 19. On and after July 1, 2001, K.S.A. 1998 Supp. 65-526 is hereby amended to read as follows: 65-526. The secretary of health and environment, in addition to any other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory of the provisions thereof or supplemental thereto, may assess a civil fine, after proper notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against a licensee or registrant for a violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. A civil fine assessed under this section shall not exceed \$500. All fines assessed and collected under this section shall be remitted promptly to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury

and credit it to the state general fund.

Sec. 20. On and after July 1, 2001, K.S.A. 65-673 is hereby amended to read as follows: 65-673. (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the secretary or by a ~~hearing-officer-designated-by-the-secretary~~ presiding officer from the office of administrative hearings for this purpose. The secretary shall prescribe by rule and regulation the procedure for conducting hearings. The hearing presiding officer shall have the same powers in conducting a hearing as the secretary. In conducting a hearing the secretary or the hearing presiding officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing presiding officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Notwithstanding the foregoing provisions of this subsection, hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

Sec. 21. On and after July 1, 2002, K.S.A. 65-720a is hereby amended to read as follows: 65-720a. (a) The term "frozen dairy dessert" means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

(b) It shall be the duty of the ~~state-board~~ secretary of agriculture, and it is hereby authorized, to prescribe and adopt rules and regulations establishing definitions and standards of identity and quality for frozen dairy desserts. Prior to the adoption of any rules and regulations establishing definitions and standards for these products, the ~~board-or-its-authorized~~ representative secretary shall give notice to all known interested persons of the time and place of a hearing, at which time any interested person may appear and present such person's

views. ~~The board may appoint a hearing officer to~~ secretary or a presiding officer from the office of administrative hearings shall conduct such hearing and make recommendations.

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

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

Sec. 22. On and after July 1, 2003, K.S.A. 65-747 is hereby amended to read as follows: 65-747. It shall be unlawful for any person required to pay or remit a fee under this act to sell, offer for sale, receive or distribute grade A raw milk for pasteurization, grade A pasteurized milk or grade A pasteurized milk products within this state without holding a valid permit to do so from the state dairy commissioner. Such permit shall be issued upon application to the dairy commissioner, and no fee shall be charged therefor. Whenever the dairy commissioner shall determine that any person holding such permit has failed to pay or remit any required fee or fees, or any part thereof, or has failed to submit a required report, or has submitted a false report, the commissioner may, upon due notice and a hearing thereon, revoke or suspend such permit. Any such hearing shall be held by the ~~state--board--of--agriculture--through--the~~ dairy commissioner or ~~the---dairy---commissioner's---authorized representative--or--by--a--hearing--officer,--duly--appointed--by--the board--through--the--dairy--commissioner--or--the--dairy--commissioner's authorized--representative~~ a presiding officer from the office of administrative hearings. The required notice and hearing shall be in accordance with the provisions of the Kansas administrative procedure act.

Sec. 23. On and after July 1, 2003, K.S.A. 65-753 is hereby amended to read as follows: 65-753. (a) If the ~~state-board-of agriculture--through--the~~ dairy commissioner or ~~the---dairy---commissioner's---authorized--representative~~ determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rule and regulation or order

issued thereunder, the ~~state--board-of-agriculture-through-the~~ dairy commissioner by written order, may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the ~~state-board-of-agriculture-through-the~~ dairy commissioner will carry out the purposes of the violated or potentially violated provision of this act or rule and regulation or order issued thereunder.

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

Sec. 24. On and after July 1, 2001, K.S.A. 65-2305 is hereby amended to read as follows: 65-2305. (a) The secretary of health and environment shall have the power and authority and is hereby charged with the duty of enforcing the provisions of this act, and the secretary is hereby authorized and directed to make, amend or revoke rules and regulations and orders for the efficient enforcement of this act.

(b) In the event of findings by the secretary that there is an existing or imminent shortage of any ingredient required to enrich flour, white bread or rolls in order to comply with this act, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this act, the secretary shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if the secretary finds it necessary or appropriate, excepting such foods from the labeling requirements of this act until the further order of the secretary. Any such findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate agency or officer. In the absence of

any such order of the appropriate agency or factual information supplied by it, the secretary on the secretary's own motion may, and upon receiving the sworn statement of 10 or more persons subject to this act that they believe such a shortage exists or is imminent shall hold a public hearing as provided in subsection (f) with respect thereto, at which any interested person may present evidence; and shall make findings based upon the evidence presented.

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

(d) All orders and rules and regulations adopted by the secretary pursuant to this act shall become effective as provided by law.

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

~~(f) The secretary shall prescribe by rule and regulation the procedure for conducting a hearing under this section and may designate a hearing officer to conduct the hearing. The hearing officer shall have the same powers in conducting the hearing as the secretary.~~ All administrative proceedings conducted pursuant to article 23 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedures act and the act for judicial review and civil enforcement of agency actions. In conducting the hearing the secretary or the hearing presiding officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing presiding officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter about which the person may be lawfully questioned, the district court of any county on

application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

Sec. 25. On and after July 1, 2001, K.S.A. 65-3483 is hereby amended to read as follows: 65-3483. (a) If, within 150 days after receipt of an application, the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife and parks of the proposed facility.

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

(c) Within 10 days after the secretary has determined that such application should be approved, the secretary shall:

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

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

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

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

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

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

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

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

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

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

(4) the impact on the surrounding area where the proposed

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

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

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

(A) The natural environment and ecology;

(B) public health and safety;

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

(D) water and air quality and wildlife.

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

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

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

Sec. 26. On and after July 1, 2001, K.S.A. 65-3488 is hereby amended to read as follows: 65-3488. (a) Permits for PCB disposal facilities shall be issued for fixed terms not to exceed 10 years.

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

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

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

Sec. 27. On and after July 1, 2001, K.S.A. 65-3490 is hereby amended to read as follows: 65-3490. (a) The secretary or the

director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

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

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

Sec. 28. On and after July 1, 2002, K.S.A. 66-1,117 is hereby amended to read as follows: 66-1,117. The corporation commission shall prescribe forms of applications for certificates, permits, and licenses for the use of prospective applicants and shall make regulations for the filing thereof. The commission may ~~designate one of its attorneys~~ use a presiding officer from the office of administrative hearings as a presiding officer for the hearing of any application for a certificate or license and the presiding officer shall make written findings and recommendations to the commission.

Sec. 29. On and after July 1, 2001, K.S.A. 1998 Supp. 74-4904 is hereby amended to read as follows: 74-4904. (1) The system may sue and be sued in its official name, but its trustees, officers, employees and agents shall not be personally liable for acts of the system unless such person acted with

willful, wanton or fraudulent misconduct or intentionally tortious conduct. Any agreement in settlement of litigation involving the system and the investment of moneys of the fund is a public record as provided in K.S.A. 45-215 et seq. and amendments thereto and subject to the provisions of that act. The service of all legal process and of all notices which may be required to be in writing, whether legal proceedings or otherwise, shall be had on the executive secretary at such executive secretary's office. All actions or proceedings directly or indirectly against the system shall be brought in Shawnee county.

(2) Any person aggrieved by any order or decision of the board made without a hearing, may, within 30 days after notice of the order or decision of the board make written request to the board for a hearing thereon. The board shall hear such party or parties in accordance with the provisions of the Kansas administrative procedure act at its next regular meeting or at a special meeting within 60 days after receipt of such request. For the purpose of any hearing under this section, the board may ~~appoint one or more presiding officers. Any such presiding officer shall be a member of the board, an employee of the board or any other person designated by the board to serve as such presiding officer. Any such appointment shall apply to a particular hearing or to a set or class of hearings as specified by the board in making such appointment~~ use a presiding officer from the office of administrative hearings. The board shall review an initial order resulting from a hearing under this section. Any member of the board who serves as a presiding officer shall be reimbursed for actual and necessary expenses and shall receive compensation in an amount fixed by the board not to exceed the per diem compensation allowable for members of the board. The board is hereby authorized to enter into a contract with ~~any other person designated by the board to serve as a presiding officer who is not a member or employee of the board~~ the office of administrative hearing and to provide for reimbursement for actual and necessary expenses and compensation for ~~such person serving as~~ a presiding officer.

Sec. 30. On and after July 1, 2001, K.S.A. 1998 Supp. 74-8804 is hereby amended to read as follows: 74-8804. (a) During race meetings, the commission and its designated employees may observe and inspect all racetrack facilities operated by licensees and all racetracks simulcasting races to racetrack facilities in Kansas, including but not limited to all machines, equipment and facilities used for parimutuel wagering.

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

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee, or of any

racetrack or business involved in simulcasting races to racetrack facilities in Kansas, for the purpose of ascertaining compliance with any provision of this act or any rule and regulation adopted hereunder.

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

(e) The commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.

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

(1) Who has violated the provisions of this act or any rule and regulation or order of the commission;

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

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

(g) The commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.

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

(i) The commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any violation of the provisions of this act or any rule and regulation or order of the commission.

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

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

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

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

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

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

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

(m) The commission may adopt rules and regulations providing for the testing of any licensees of the commission, and any officers, directors and employees thereof, to determine whether they are users of any controlled substances.

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

(o) The commission may receive from commission security personnel, the Kansas bureau of investigation or other criminal justice agencies, including but not limited to the federal bureau of investigation and the federal internal revenue service, such

criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of the commission, employees of the commission, applicants for employment by the commission, and applicants for licensure by the commission, including applicants for simulcasting licenses. Upon the written request of the chairperson of the commission, the commission may receive from the district courts such information relating to juvenile proceedings as necessary for the purpose of determining qualifications of employees of and applicants for employment by the commission and determining qualifications of licensees of and applicants for licensure by the commission. Such information, other than conviction data, shall be confidential and shall not be disclosed except to members and employees of the commission as necessary to determine qualifications of such licensees, employees and applicants. Any other disclosure of such confidential information is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act.

(p) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (o) and to negotiate with licensees of or applicants for licensure by the commission regarding any such information.

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

(r) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

Sec. 31. On and after July 1, 2001, K.S.A. 1998 Supp. 74-8816 is hereby amended to read as follows: 74-8816. (a) The commission shall require occupation licenses for:

(1) Any owner of a horse or greyhound participating in a race conducted by an organization licensee;

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

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

(c) A person required to be licensed pursuant to subsection

(a) shall apply for such license in a manner and upon forms prescribed and furnished by the commission. The commission may require the applicant to submit to fingerprinting. Occupation licenses shall be issued for a period established by the commission but not less than one year or more than three years. The commission shall establish the amount of application fees and license fees for different types of occupation licenses, but no such fee shall exceed \$200 a year. The application fee shall not be refundable if the applicant fails to qualify for a license and shall include the cost of processing fingerprints if they are required by the commission.

(d) The commission may require an applicant for an occupation license as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's person, personal property and work premises while within the racetrack facility or adjacent facilities under the control of the organization licensee for the purpose of investigating possible criminal violations of this act or violations of rules and regulations of the commission.

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

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

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

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

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

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

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

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

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

(f) The commission may suspend or revoke an occupation license for any reason which would justify refusal to issue such

a license and may impose a fine not exceeding \$5,000 for each violation upon any occupation licensee found to have violated any provision of this act or any rule and regulation of the commission. Such fine may be imposed in addition to or in lieu of suspending or revoking such person's occupation license. Proceedings for the suspension or revocation of an occupation license or imposition of a fine pursuant to this subsection shall be conducted by the commission or its-appointed-hearing-officer a presiding officer from the office of administrative hearings in accordance with the Kansas administrative procedure act, except that, and notwithstanding the provision of K.S.A. 77-512, subsection (b) of K.S.A. 77-526 and subsection (b)(3) of K.S.A. 77-530(b)(3), and amendments thereto, any order entered by a hearing-officer-appointed-by--the--commission presiding officer imposing such a fine or suspension shall be a final order and effective when served.

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

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

Sec. 32. On and after July 1, 2001, K.S.A. 1998 Supp. 74-8817 is hereby amended to read as follows: 74-8817. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to sell goods or services within a racetrack facility where the organization licensee conducts race meetings unless such business has been issued a concessionaire license by the commission.

(b) Businesses required to be licensed pursuant to this section shall apply for concessionaire licenses in a manner and upon forms prescribed and furnished by the commission. The commission shall require disclosure of information about the

owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Concessionaire licenses shall be issued for a period of time established by the commission but not to exceed 10 years. The commission shall establish a schedule of application fees and license fees for concessionaire licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

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

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

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

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

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

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

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

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

(f) The commission may provide by rules and regulations for the temporary suspension of a concessionaire license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

Sec. 33. On and after July 1, 2001, K.S.A. 1998 Supp. 74-8837 is hereby amended to read as follows: 74-8837. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to provide integral racing or wagering equipment or services, as designated by the commission, to an organization licensee unless such business has been issued a racing or wagering equipment or services license by the commission. Such equipment and services include but are not limited to totalisator, photo finish, video replay and video reception and transmission equipment or services.

(b) Businesses required to be licensed pursuant to this section shall apply for racing or wagering equipment or services licenses in a manner and upon forms prescribed and furnished by the commission. The commission shall require disclosure of information about the owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Racing or wagering equipment or services licenses shall be issued for a period of time established by the commission but not to exceed 10 years. The commission shall establish a schedule of application fees and license fees for racing or wagering equipment or services licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any

additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

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

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

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

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

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

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

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

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

(f) The commission may provide by rules and regulations for the temporary suspension of a racing or wagering equipment or services license by summary adjudicative proceedings in

accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

(g) This section shall be part of and supplemental to the Kansas parimutuel racing act.

Sec. 34. On and after July 1, 1999, through June 30, 2000, K.S.A. 75-37,121 is hereby amended to read as follows: 75-37,121. ~~On--and--after--July--17--1998:~~ (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) ~~The office shall~~ may employ ~~administrative--law--judges presiding officers,~~ court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of ~~the department--of--social--and--rehabilitation--services~~ the state agencies, boards and commissions specified in subsection (h). ~~The office shall conduct adjudicative proceedings of the--department of--social-and-rehabilitation-services~~ any state agency which are not under the Kansas administrative procedure act is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as an administrative law judge a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

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

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

(e) ~~On--or--before-January-17-1999,~~ The department secretary of administration ~~shall~~ may adopt rules and regulations:

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

~~the staff of the office will be given;~~

(2) To establish procedures for agencies to request and for the director to assign ~~administrative--law--judges~~ presiding officers. ~~The department of social and rehabilitation services~~ An agency may neither select nor reject any individual ~~administrative-law-judge~~ presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

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

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

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

(f) The director may:

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

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

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

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head: department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council and Kansas human rights commission.

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

transfer of employment had occurred.

(j) Effective July 1, 1999, any presiding officer in the administrative hearings section of all agencies specified in subsection (h) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 35. On and after July 1, 2000, through June 30, 2001, K.S.A. 75-37,121, as amended by section 34 of this act, is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

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

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act or not listed in subsection (h).

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

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

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

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

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

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

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head: department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council, and Kansas human rights commission, Kansas department of wildlife and parks, department of revenue, state board of veterinary examiners, behavioral sciences regulatory board, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, state board of cosmetology, Kansas board of barbering, state board of technical professions and state board of tax appeals.

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

(j) Effective July 1, ~~1999~~ 2000, any presiding officer in the administrative hearings section of all agencies specified in subsection (h) which conduct hearings pursuant to the Kansas

administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 36. On and after July 1, 2001, through June 30, 2002, K.S.A. 75-37,121, as amended by section 35 of this act, is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

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

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act or not listed in subsection (h).

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

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative

procedure act;

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

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

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

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

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head: department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council, Kansas human rights commission, Kansas department of wildlife and parks, department of revenue, state board of veterinary examiners, behavioral sciences regulatory board, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, state board of cosmetology, Kansas board of barbering, state board of technical professions and, state board of tax appeals, department of health and environment, state board of healing arts, Kansas lottery, Kansas racing commission, Kansas state banking board, consumer credit commissioner, state department of credit unions, office of the securities commissioner of Kansas, Kansas public employees retirement system, board of adult care home administrators, state treasurer, board of accountancy and pooled money investment board.

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

(j) Effective July 1, 2000 2001, any presiding officer in the administrative hearings section of all agencies specified in subsection (h) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 37. On and after July 1, 2002, through June 30, 2003, K.S.A. 75-37,121, as amended by section 36 of this act, is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

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

(d) The ^{whether or} director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act or not listed in subsection (h).

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

(1) To establish procedures for agencies to request and for

the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

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

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

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

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

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head: department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council, Kansas human rights commission, Kansas department of wildlife and parks, department of revenue, state board of veterinary examiners, behavioral sciences regulatory board, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, state board of cosmetology, Kansas board of barbering, state board of technical professions, state board of tax appeals, department of health and environment, state board of healing arts, Kansas lottery, Kansas racing commission, Kansas state banking board, consumer credit commissioner, state department of credit unions, office of the securities commissioner of Kansas, Kansas public employees retirement system, board of adult care home administrators, state treasurer, board of accountancy and pooled money investment board, department of agriculture, department of human resources, state corporation commission, state conservation commission, Kansas water office, agricultural labor relations board, Kansas animal health department, Kansas state grain inspection department, Kansas wheat commission and citizens' utility rate payor board.

(i) Effective July 1, 1998, personnel in the administrative hearings section of the department of social and rehabilitation services and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such

person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This act shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(j) Effective July 1, ~~2001~~ 2002, any presiding officer in the administrative hearings section of all agencies specified in subsection (h) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 38. On and after July 1, 2003, K.S.A. 75-37,121, as amended by section 37 of this act, is hereby amended to read as follows: 75-37,121. (a) ~~There--is--created~~ The office of administrative hearings within the department of administration, to is hereby transferred out of the department of administration and established as an independent agency within the executive branch of state government. The office of administrative hearings shall be headed by a director appointed by the secretary of--administration governor. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act ~~for--adjudicative--proceedings--of--the--state--agencies--boards--and--commissions--specified--in--subsection--(h).~~ The office shall conduct adjudicative proceedings of any state agency which is--specified in--subsection--(h) is not under the Kansas administrative procedure act when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers in response to a requesting agency's request, the director shall designate in writing a full-time employee of an

agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act ~~or-not-listed-in-subsection-(h)~~.

(e) The ~~secretary-of-administration~~ director may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

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

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

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

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

~~(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head: department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council, Kansas human rights commission, Kansas department of wildlife and parks, department of revenue, state board of veterinary examiners, behavioral sciences regulatory board, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, state board of cosmetology, Kansas board of barbering, state board of technical professions, state board of tax appeals, department of health and environment, state board of healing arts, Kansas lottery, Kansas racing commission, Kansas state banking board, consumer credit commissioner, state department of credit unions, office of the securities commissioner of Kansas, Kansas public employees retirement system, board of adult care home administrators, state treasurer, board of accountancy, pooled money investment board, department of agriculture, department of human resources, state corporation commission, state conservation commission, Kansas~~

water-office, agricultural-labor-relations-board, Kansas--animal health--department, Kansas--state--grain--inspection-department, Kansas-wheat-commission-and-citizens'-utility-rate-payor-board.

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

(j) Effective July 17, 2002, any presiding officer in the administrative hearings section of all agencies specified in subsection (h) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 39. On and after July 1, 2003, K.S.A. 75-37,122 is hereby amended to read as follows: 75-37,122. On and after July 17, 1998: (a) There is hereby created a state advisory council for administrative hearings. The advisory council shall consist of seven members appointed by the governor. All members of the council shall serve at the pleasure of the governor. Members of the council shall not receive compensation or expense allowances for serving on the council.

(b) The council shall meet on call of the secretary of administration director of the office of administrative hearings.

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

Sec. 40. On and after July 1, 1999, K.S.A. 75-6207 is hereby

amended to read as follows: 75-6207. (a) If the director receives a timely written request for a hearing under K.S.A. 75-6206 and amendments thereto, the director shall request ~~the--secretary--of administration-to-appoint~~ a presiding officer from the office of administrative hearings who shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether the debt claim is valid. Subject to the provisions of subsection (b), the presiding officer shall determine whether the claimed sum asserted as due and owing is correct, and if not, shall order an adjustment to the debt claim which shall be forwarded to the director and to the state agency, foreign state agency or municipality to which the debt is owed. No issue may be considered at the hearing which has been previously litigated and no collateral attack on any judgment shall be permitted at the hearing. The order of the presiding officer shall inform the debtor of the amount determined as due, if any, and that setoff procedures have been ordered to proceed in accordance with this act. If the setoff is to be made against earnings of the debtor, the order shall include a statement that the setoff may be postponed in accordance with K.S.A. 75-6208 and amendments thereto. Orders under this section shall not be subject to administrative review.

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

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

(d) Judicial review of an order under this section shall be in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. In any such review, except as provided in subsection (e), the department of administration and the secretary of administration shall not be named parties to the proceedings.

(e) Parties to an action for review of an order under this section shall be: (1) The debtor; (2) the state agency, foreign state agency or municipality which requested assistance in collecting the debt or which certified the debt; and (3) any party the district court permits to intervene in the action. Applications for a stay or other temporary remedies shall be to the district court.

Sec. 41. On and after July 1, 1999, K.S.A. 76-3110 is hereby amended to read as follows: 76-3110. (a) The KPR board may initiate a proceeding to effect termination of a postsecondary institution's participation in federal student aid programs by serving written notice upon the institution that the board has determined that the institution should not be eligible for

participation in such programs. The notice shall include a statement of the reasons for the determination and a statement that the institution may contest the finding before a hearing presiding officer upon written request filed with the KPR board. The request to be heard must be filed within 15 days from the date of the notice of the board's determination. Upon receipt of a request by an institution to be heard, the KPR board shall notify the secretary of human resources that the appointment of a hearing presiding officer is required. Within 10 days after receipt of notification from the KPR board, the secretary of human resources shall appoint request a hearing presiding officer from--a--list,--which--shall--be--compiled--and--maintained--by--the--secretary--of--human--resources,--of--impartial--persons--who--are--representative--of--the--public--and--who--are--qualified--to--serve--as--hearing--officers.

(b) Any hearing requested by a postsecondary institution as provided in subsection (a) shall be commenced within 15 calendar days after the hearing presiding officer is appointed requested and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Within 30 days after close of the hearing, the hearing presiding officer shall render a written opinion setting forth the hearing presiding officer's findings of fact and recommendation as to the determination of the matter. The opinion shall be submitted to the KPR board and to the postsecondary institution. If, after receipt of the hearing presiding officer's opinion, the KPR board concludes that the board's determination that the institution should not be eligible for participation in federal student aid programs was warranted, the board shall notify the institution and the secretary of education of the determination and the reasons therefor.

Sec. 42. On and after July 1, 1999, K.S.A. 77-505 is hereby amended to read as follows: 77-505. Nothing in this the Kansas administrative procedure act shall preclude ~~informal--settlement of--matters--that--may--make--unnecessary--more--elaborate--proceedings under--this--act~~ parties from settling a matter at any time. In addition, nothing in the Kansas administrative procedure act shall preclude use of alternative dispute resolution, with consent of the agency and all parties.

Sec. 43. On and after July 1, 1999, K.S.A. 1998 Supp. 77-514 is hereby amended to read as follows: 77-514. (a) For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto, the agency head, one or more members of the agency head ~~7--an--administrative--law--judge~~ or a presiding officer assigned by the office of administrative hearings ~~7--or,--unless--prohibited--by K.S.A.--77-551,--and--amendments--thereto,--one--or--more--other--persons designated--by--the--agency--head--may~~ shall be the presiding officer. For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.

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

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

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

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

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

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

Sec. 44. On and after July 1, 2003, K.S.A. 1998 Supp. 77-514, as amended by section 43 of this act, is hereby amended to read as follows: 77-514. ~~(a) For agencies listed in subsection (h) of K.S.A. 75-377, 217, and amendments thereto,~~ The agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings shall be the presiding officer. ~~For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.~~

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

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

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

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

(f) If the office of administrative hearings cannot provide a presiding officer, a state agency may enter into agreements with another state agency to provide presiding officers to

conduct proceedings under this act.

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

Sec. 45. On and after July 1, 2000, K.S.A. 77-549 is hereby amended to read as follows: 77-549. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative procedure act.

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

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

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

Sec. 46. On and after July 1, 2000, K.S.A. 77-550 is hereby amended to read as follows: 77-550. For purposes of administrative proceedings of the division of property valuation under the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of property valuation or ~~other-designee~~ a presiding officer from the office of administrative hearings as agency head.

Sec. 47. On and after July 1, 1999, K.S.A. 77-551, is hereby amended to read as follows: 77-551. ~~On-and-after--July--17--1998-~~

(a) ~~Except as provided in subsection (b), in all hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340 and amendments thereto,~~ any state agency specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or an administrative-law-judge a presiding officer assigned by the

office of administrative hearings.

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

Sec. 48. On and after July 1, 2003, K.S.A. 77-551, as amended by section 47 of this act, is hereby amended to read as follows: 77-551. (a) Except as provided in subsection (b), in all hearings of any state agency ~~specified--in--subsection--(h)--of K.S.A.--75-37,121,--and--amendments--thereto,~~ that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings.

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

Sec. 49. On and after July 1, 2000, K.S.A. 79-3313 is hereby amended to read as follows: 79-3313. All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act ~~in-the-office--of--the--director--at Topeka.~~ If upon the basis of such hearing it appears to the

satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

Sec. 50. On and after July 1, 2002, K.S.A. 82a-1405 is hereby amended to read as follows: 82a-1405. (a) At the direction of the authority, the director may issue licenses for weather modification activities, as provided for in this act, but any licensee shall be limited in the exercise of activities under the license to the specified method or methods of weather modification activity within the area of expertise of the licensee.

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

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

(2) the geographic area to be affected; and

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

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

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

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

(d) In order to assist in expanding the theoretical and practical knowledge of weather modification, the authority, to the extent that funds are available therefor, may cooperate with, support, participate in and promote research, development and operational programs in:

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

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

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

(e) Subject to any limitations imposed by law, to further

the purposes of this act, the authority may utilize available funds from the state and may accept federal grants, private gifts and donations from any source. Except as otherwise provided by law, the authority may use any such moneys:

- (1) For the administration of this act;
- (2) to encourage research and development projects by public or private agencies through grants, contracts or cooperative arrangements;
- (3) to contract for and support local efforts in weather modification activities to seek relief from or to avoid droughts, hail, storms, fires, fog or other naturally undesirable conditions.

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

Sec. 51. On and after July 1, 2002, K.S.A. 82a-1501a is hereby amended to read as follows: 82a-1501a. (a) The water transfer hearing panel shall consist of the chief engineer, the director and the secretary. The chief engineer shall serve as chairperson of the panel. All actions of the panel shall be taken by a majority of the members. The panel shall have all powers necessary to implement the provisions of this act.

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

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

Sec. 52. On and after July 1, 2002, K.S.A. 82a-1502 is hereby amended to read as follows: 82a-1502. (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area

from which the water is to be taken for transfer unless: (1) The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever an emergency exists, a water transfer may be approved by the panel on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the panel.

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

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

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

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

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

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

(5) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;

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

(7) the effectiveness of conservation plans and practices

adopted and implemented by the applicant and any other entities to be supplied water by the applicant;

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

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

Sec. 53. On and after July 1, 2002, K.S.A. 82a-1503 is hereby amended to read as follows: 82a-1503. (a) Any person desiring to make a water transfer shall file with the chief engineer an application in the form required by rules and regulations adopted by the chief engineer. If the chief engineer finds the application to be insufficient to enable the chief engineer to determine the source, nature and amount of the proposed transfer, or if the application is not complete, the application shall be returned for correction or completion or for any other necessary information.

(b) The hearing presiding officer shall commence the hearing process by giving notice of the prehearing conference not more than 14 days after the panel ~~employs-the-hearing~~ is assigned a presiding officer. Such notice shall be given by mail to the applicant, any other parties who have intervened and the appropriate commenting agencies and shall be published in the Kansas register and in at least two newspapers having general circulation in the area where the proposed point of diversion is located. The hearing presiding officer shall hold a prehearing conference which shall commence not less than 90 and not more than 120 days after the required notice has been given and shall conclude not later than 45 days after commencement. Not less than 90 and not more than 120 days after the conclusion of the prehearing conference, the hearing presiding officer shall commence a formal public hearing. The formal public hearing shall be held in the basin of origin and, if deemed necessary by the hearing presiding officer, a public comment hearing shall be held in the basin of use. The formal public hearing shall conclude not later than 120 days after commencement and the initial order of the hearing presiding officer approving or disapproving the water transfer shall be issued not later than 90 days after conclusion of the formal public hearing. The hearing presiding officer may extend a time limit provided by this subsection, but only with the written consent of all parties or for good cause shown.

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

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

(e) At intervals during or at the conclusion of the hearing,

the hearing presiding officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: The hearing facility, the court reporter, the salary of a hearing presiding officer who is not paid for services as a hearing presiding officer by state funds, the travel expenses of the hearing presiding officer and other reasonable costs associated with the hearing. The hearing presiding officer may assess any or all anticipated costs to the applicant before the hearing and subsequently may assess other parties for the parties' fair and equitable portion of the anticipated costs assessed the applicant. Amounts assessed pursuant to this subsection shall be paid to the chief engineer. Upon receipt thereof, the chief engineer shall remit the entire amount to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the water transfer hearing fund established by subsection (f).

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

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

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

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

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

Sec. 54. On and after July 1, 2002, K.S.A. 82a-1504 is hereby amended to read as follows: 82a-1504. (a) The hearing presiding officer shall render an order either approving or disapproving the proposed water transfer. The hearing presiding officer's order shall include findings of fact relating to each of the factors set forth in subsection (c) of K.S.A. 82a-1502 and amendments thereto. The hearing presiding officer may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as the hearing presiding officer deems necessary for the protection of the public interest of the state as a whole.

(b) An order of the hearing presiding officer disapproving or approving a water transfer, in whole or in part, shall be deemed an initial order. The panel shall be deemed the agency head for the purpose of the Kansas administrative procedure act

and shall review all initial orders of the hearing presiding officer in accordance with the Kansas administrative procedure act. Review by the panel shall be in accordance with the standards provided by this act for the hearing presiding officer's initial order and shall be based on the record of the hearing. The final order of the panel shall be entered not later than 90 days after entry of the hearing presiding officer's initial order, except that the panel may extend the 90-day limit, but only with the written consent of all parties or for good cause shown.

(c) Any proceedings pursuant to this act and notice of such proceedings shall be in accordance with the provisions of the Kansas administrative procedure act except as specifically provided by this act.

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

Sec. 55. On and after July 1, 1999, K.S.A. 21-3110, 75-37,121, 75-5611a, 75-6207, 76-3110, 77-505 and 77-551 and K.S.A. 1998 Supp. 44-1005 and 77-514 are hereby repealed.

Sec. 56. On and after July 1, 2000, K.S.A. 8-2426, 75-37,121, as amended by section 34 of this act, 77-549, 77-550 and 79-3313 are hereby repealed.

Sec. 57. On and after July 1, 2001, K.S.A. 36-509, 65-163a, 65-673, 65-2305, 65-3483, 65-3488, 65-3490, 75-37,121, as amended by section 35 of this act, and K.S.A. 1998 Supp. 65-163, 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and 74-8837 are hereby repealed.

Sec. 58. On and after July 1, 2002, K.S.A. 2-1208a, 2-3311, 44-322a, 49-606, 65-720a, 66-1,117, 75-37,121, as amended by section 36 of this act, 82a-1405, 82a-1501a, 82a-1502, 82a-1503 and 82a-1504 are hereby repealed.

Sec. 59. On and after July 1, 2003, K.S.A. 31-140, 40-2,137, 65-747, 65-753, 75-37,121, as amended by section 37 of this act, 75-37,122, and K.S.A. 77-551, as amended by section 47 of this act and K.S.A. 1998 Supp. 77-514, as amended by section 43 of this act, are hereby repealed.

Sec. 60. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED AMENDMENTS TO K.S.A. 26-504, 26-505 and 26-513

1 26-504. If the judge to whom the proceeding has been assigned finds from the
2 petition: (1) the plaintiff has the power of eminent domain; and (2) the taking is
3 necessary to the lawful corporate purposes of the plaintiff, he the judge shall entertain
4 suggestions from any interested party relating to the appointment of appraisers and the
5 judge shall enter an order appointing three (3) disinterested householders of the county
6 in which the petition is filed, who have experience in the valuation of real estate, to view
7 and appraise the value of the lots and parcels of land found to be necessary, and to
8 determine the damages to the interested parties resulting from the taking. Such order
9 shall also fix the time for the filing of the appraisers' report, and such time for filing
10 shall not be later than twenty (20) days after the entry of such order: Provided, For
11 good cause shown, the court may extend the time for filing by a subsequent order. The
12 granting of an order determining that the plaintiff has the power of eminent domain
13 and that the taking is necessary to the lawful corporate purposes of the plaintiff shall
14 not be considered a final order for the purpose of appeal to the supreme court, but an
15 order denying the petition shall be considered such a final order.

16 Appeals to the supreme court may be taken from any final order under the
17 provisions of this act. Such appeals shall be prosecuted in like manner as other appeals
18 and shall take precedence over other cases, except cases of a like character and other
19 cases in which preference is granted by statute.

Comment

1
2
3 The phrase “to whom the proceeding has been assigned” clarifies to which judge of
4 the district court this section refers.
5

6 In line 3, the amendment which states “the judge shall entertain suggestions from any
7 interested party relating to the appointment of appraisers” codifies the position of the
8 committee that there is value in hearing from the interested parties with regard to
9 appointment of appraisers.
10

11 The proposed amendment in line 6 inserts the requirement that the appraisers
12 appointed “have experience in the valuation of real estate.” This amendment comes from
13 1998 Senate Bill 413 which was proposed by the Legislative Post Audit Committee and
14 implements one of the recommendations of the “Performance Audit Report Reviewing the
15 Department of Transportations Acquisitions of Right-Of-Way for Highway Projects,” March,
16 1997.
17

1 **26-513. (a) Necessity. Private property shall not be taken or damaged for public**
2 **use without just compensation.**

3 **(b) Taking entire tract. If the entire tract of land or interest therein is taken, the**
4 **measure of compensation is the fair market value of the property or interest at the time**
5 **of the taking.**

6 **(c) Partial taking. If only a part of a tract of land or interest is taken, the**
7 **compensation and measure of damages are the difference between the fair market value**
8 **of the entire property or interest immediately before the taking, and the fair market**
9 **value of that portion of the tract or interest remaining immediately after the taking.**

10 **(d) Factors to be considered. In ascertaining the amount of compensation and**
11 **damages ~~as above defined~~, the following factors, without restriction because of**
12 **enumeration, shall be given consideration if shown to exist but they are not to be**
13 **considered as separate items of damages, but are to be considered only as they affect**
14 **the total compensation and damage under the provisions of subsections (b) and (c) of**
15 **this section:**

- 16 **1. The most advantageous use to which the property is reasonably adaptable.**
- 17 **2. Access to the property remaining.**
- 18 **3. Appearance of the property remaining, if appearance is an element of value**
19 **in connection with any use for which the property is reasonably adaptable.**
- 20 **4. Productivity, convenience, use to be made of the property taken, or use of**
21 **the property remaining.**

- 1 **5. View, ventilation and light, to the extent that they are beneficial attributes**
2 **to the use of which the remaining property is devoted or to which it is**
3 **reasonably adaptable.**
- 4 **6. Severance or division of a tract, whether the severance is initial or is in**
5 **aggravation of a previous severance; changes of grade and loss or**
6 **impairment of access by means of underpass or overpass incidental to**
7 **changing the character or design of an existing improvement being**
8 **considered as in aggravation of a previous severance, if in connection with**
9 **the taking of additional land and needed to make the change in the**
10 **improvement.**
- 11 **7. Loss of trees and shrubbery to the extent that they affect the value of the**
12 **land taken, and to the extent that their loss impairs the value of the land**
13 **remaining.**
- 14 **8. Cost of new fences or loss of fences and the cost of replacing them with**
15 **fences of like quality, to the extent that such loss affects the value of the**
16 **property remaining.**
- 17 **9. Destruction of a legal nonconforming use.**
- 18 **10. Damage to property abutting on a right-of-way due to change of grade**
19 **where accompanied by a taking of land.**
- 20 **11. Proximity of new improvement to improvements remaining on condemnee's**
21 **land.**
- 22 **12. Loss of or damage to growing crops.**

1 13. That the property could be or had been adapted to a use which was
2 profitably carried on.

3 14. Cost of new drains or loss of drains and the cost of replacing them with
4 drains of like quality, to the extent that such loss affects the value of the
5 property remaining.

6 15. Cost of new private roads or passageways or loss of private roads or
7 passageways and the cost of replacing them with private roads or
8 passageways of like quality, to the extent that such loss affects the value of
9 the property remaining.

10 (e) Fair Market Value. "Fair market value" means the amount in terms of
11 money that a well informed buyer is justified in paying and a well informed seller is
12 justified in accepting for property in an open and competitive market, assuming that
13 the parties are acting without undue compulsion. The fair market value shall be
14 determined by use of the comparable sales, cost or capitalization of income appraisal
15 methods or any combination thereof.

16 Comment

17
18 The proposed changes in K.S.A. 26-513 change the current law of how property is
19 valued in a condemnation proceeding. Currently, the comparable sales method of
20 determining value of property taken by a condemnation proceeding is required to be used if
21 comparable sales are available. Under the proposed amendment the "fair market value" of
22 property taken in a condemnation proceeding will be determined by the use of the
23 comparable sales appraisal method, the cost appraisal method or the capitalization of income
24 appraisal method.

25
26 The use of the comparable sales appraisal method, the cost appraisal method or the
27 capitalization of income appraisal method is consistent with Standards Rule 1-4 of the
28 Uniform Standards of Professional Appraisal Practice to which licensed appraisers in Kansas
29 must comply.
30

1 The definition of fair market value in subsection (e) is nearly identical to the
2 definition of fair market value found in K.S.A. 79-503a, which is the statute that defines fair
3 market value for the purpose of taxation of real estate. The committee is of the opinion that
4 it is appropriate to define fair market value in the same manner in situations in which the
5 government is taking a citizen's property as it is defined in situations in which the
6 government is taxing a citizen's property.
7

8 F:\ADMIN\MISC\CCAC\EMINDOM\CHTR26.98

79-15,100. Title of act. Sections 1 through 18 of this act and the provisions of article 15 of chapter 79 of the Kansas Statutes Annotated not repealed by this act shall be known and may be cited as the Kansas estate tax act.

79-15,101. Definitions. As used in this act unless the context otherwise requires:

(a) Any term used in this act shall have the same meaning as when used in a comparable context in the internal revenue code. Any reference in this act to the "internal revenue code" shall mean the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 1997. Any reference in this act to a specific provision of the internal revenue code shall be to such provision as it exists on December 31, 1997.

(b) "Deemed executor" includes any person in actual or constructive possession of any property of the decedent.

(c) "Director" means the director of taxation.

(d) "Domicile" refers to that place where a person resides, has an intention to remain, and to which they intend to return following any absence.

(e) "Estate" and "property" shall mean the real, personal, and mixed property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor which shall pass or be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors and shall include all personal property within or without the state.

(f) "Executor" and "administrator" mean the duly appointed, qualified and acting executor or administrator of the decedent in this state.

(g) "Nonresident decedent" means a decedent who was not a resident decedent at the time of their death.

(h) "Personal representative" means the executor, administrator or deemed executor of the decedent.

(i) "Resident decedent" means a decedent who was domiciled in this state at the time of death.

(j) "Secretary" means the secretary of revenue, or the secretary's designee.

(k) "Tax" includes tax, penalty and interest, unless the context of a particular section otherwise requires.

(l) "Transfer" shall include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed.

79-15,102. Imposition of tax; proration of tax, when. (a) A tax is hereby imposed on the estate of every resident decedent, and every nonresident decedent who died holding an interest in property with a Kansas tax situs, whose estate is required by federal law to file a return for federal estate taxes. The amount of such tax shall be equal to the amount of the maximum credit ~~allowed~~ allowable by section 2011 of the internal revenue code against the tax ~~that would otherwise be~~ imposed on the transfer of the estate of the decedent by section 2001 of the internal revenue code.

(b) When the estate of a resident decedent shall consist of property within and without the state, or in the case of the estate of a nonresident decedent who died holding an interest in property with a Kansas tax situs the tax imposed under subsection (a) shall be the percentage thereof that the gross estate for federal estate tax purposes less the value of all property included therein having a tax situs which is not within the jurisdiction of the state of Kansas, bears to the total gross estate for federal estate tax purposes.

79-15,103. Requirements for filing of return and payment of tax; interest on late payment. (a) The personal representative of every estate subject to the tax imposed by K.S.A. 79-15,102 who is required by federal law to file a return for federal estate taxes shall file in the office of the director a return on forms prepared and furnished by the secretary together with a copy of the federal estate tax return on or before the date the federal estate tax return is required to be filed. The personal representative of any decedent whose estate is not taxable under the provisions of the Kansas estate tax act, may obtain a determination of the director that no tax liability exists thereon by filing a return on forms prepared and furnished by the secretary stating that such estate is not taxable.

(b) The taxes imposed under the provisions of this act shall be paid by the personal representative to the director at the expiration of nine months after the death of the decedent.

(c) If the taxes contemplated by this act are not paid when due, interest at the rate prescribed by K.S.A. 79-2968(b), and amendments thereto, shall be charged and collected commencing at the time the same become payable.

~~**79-15,104. Nontaxable estates; affidavit of personal representative; certificate of director; release of lien, form.** The personal representative of any decedent whose estate is not taxable under the provisions of the Kansas estate tax act, may obtain a determination of the director that no tax liability exists thereon by filing an affidavit with the director stating that such estate is not taxable. Any such affidavit shall be in such form as prescribed by the secretary to show the condition of the estate to the extent that the director may make such determination. Upon being satisfied of the information contained in such affidavit, the director shall issue a certificate that the estate is not taxable under the provisions of this act to the person making such affidavit, and when the estate is involved in proceedings before a district court, to the judge of such court for recording in full in the journal of such court. Release of the lien imposed by K.S.A. 79-1569, and amendments thereto, may be provided by filing notice of release in the office of the register of deeds in any county where any such real property included in the gross estate is located or, when the estate is involved in proceedings before a district court, with the court. Any such notice of release shall be in such form as prescribed by the secretary and may include use of or reference to the certificate issued by the director or may be included as part of that certificate.~~

79-15,105. Examination of return by director; notice of additional tax; informal conference; final determination and notice; refund of excess tax paid; appeals. As soon as practicable after the return is filed, the director shall make an examination thereof and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto. If the tax found due is less than the amount paid, the excess so paid shall be refunded to the personal representative who paid the tax, except that no refund of \$25 or less shall be made. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the person filing the return by registered or certified mail. An order finding additional tax shall be accompanied by a notice and demand for payment. The tax shall be paid within 30 days thereafter, together with interest on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438, and amendments thereto. No additional tax shall be assessed for less than \$25.

79-15,106. Jurisdiction of controversies by director; counsel for state; order by court

for payment of tax. Subject to the right of any personal representative to apply for review as provided for in this act, the director shall hear and determine all questions relative to such tax. The attorney for the director, at the request of the director, shall represent the state in any court proceedings brought to review any action of the director. If any district court shall find that any such tax remains due and that proper proceedings have not been taken before the director for abatement thereof, it shall order the personal representative to pay the same, with interest, and costs, and no question regarding the validity of such tax shall be heard in such court. If it appears that there are no goods or assets of the estate in the personal representative's hands, the court may assess the amount of the tax against the personal representative, as if for the personal representative's own debt, and may enforce compliance with such order; but the personal representatives hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in such offices or have custody or control of decedent's property.

79-15,107. Liability for tax; enforcement of collection of tax; tax lien. (a) ~~Property of which a decedent died seized or possessed, subject to the taxes imposed by this act, in whatever form of investment it may happen to be shall be charged with a lien for all taxes, penalty and interest thereon which are or may become due on such property; but the lien shall not affect any property after it has been sold or disposed of for value by the executors or administrators in accordance with law, but in all such cases a lien shall attach to the proceeds realized from any such sale or other disposition for all taxes and interest thereon which are or may be due on such property. That portion of the decedent's property which is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. The lien on any property subject to the act by virtue of the provisions of this subsection shall be divested after 10 years from the date of the decedent's death. If the taxes imposed under this act are not paid when due, the spouse, transferee, other than a bona fide purchaser for value, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate as determined for federal estate tax purposes shall be personally liable for such tax, to the extent of the value of such property at the time of the decedent's death.~~

(b) If the personal representative fails to timely pay the tax imposed by K.S.A. 79-15,102, the director shall enforce ~~the director's lien~~ payment of the tax by the issuance of a warrant under the director's hand and official seal, directed to the sheriff of any county of the state, commanding such sheriff to levy upon and sell the real and personal property of the estate found within the sheriff's county for the payment of the amount thereof, with the added interest and the cost of executing the warrant, and to return such warrant to the director and pay to the director the money collected by virtue thereof not more than 60 days from the date of the warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of the district court of the sheriff's county a copy thereof, and thereupon the clerk shall enter in the appearance docket in appropriate columns, the name of the estate named in the warrant, the amount of the tax or portion thereof and interest for which the warrant is issued and the date such copy is filed. The amount of such warrant so docketed shall thereupon become a lien upon the title to, and interest in, the real property of the estate against whom it is issued in the same manner, as a judgment duly docketed in the office of such clerk. The sheriff shall proceed in the same manner and with like effect as prescribed by law with respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for the sheriff's services to

be collected in the same manner.

(c) The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. In the discretion of the director, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director, and in the execution thereof such officer or employee shall have all the powers conferred by laws upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The estate shall have the right to redeem the real estate within a period of 18 months from the date of such sale. If a warrant be returned, unsatisfied in full, the director shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the distributee for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any such warrants or upon any execution issued upon any judgment rendered in any action for inheritance taxes. The director shall have the right at any time after the warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of the tax is collected.

79-15,108. Release or transfer of assets of nonresident decedent to foreign personal representative; notice. (a) Assets belonging to the estate of a deceased nonresident, other than intangible assets of a decedent who at the time of death resided in the United States but outside this state, shall not be delivered or transferred to a foreign personal representative of such decedent without serving notice upon the director of taxation of the time and place of such intended delivery or transfer at least seven days before the time of such delivery or transfer. The director or the director's representative may examine such assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination or the making of a delivery or transfer of such assets against the objection of the director shall render the person, association, or corporation making the delivery or transfer liable for the payment of the tax and interest due upon said assets, in an action brought by the department of revenue in the name of the state.

(b) A foreign or Kansas person, corporation, partnership or other association of persons may release or transfer intangible assets of a nonresident decedent upon receipt of a sworn affidavit from the personal representative of the decedent's estate, stating that the decedent was not a resident of the state of Kansas at the time of the decedent's death but that such decedent was a resident of another state in the United States.

79-15,109. Issuance of closing letter; release of lien. (a) As soon as practicable after the return is filed and the taxes paid, the director shall issue a closing letter. Such closing letter shall be issued to the personal representative upon the director being satisfied that there has been a final determination of all taxes due and that all such taxes have been paid. ~~The director shall issue such closing letter to the personal representative, and when the estate is involved in probate proceedings before a district court, a copy of such closing letter shall be forwarded to the judge of such court for recording in full in the journal of such court.~~

~~(b) Release of the lien imposed by K.S.A. 79-15,107, and amendments thereto, may be provided by filing notice of release in the office of the register of deeds in any county where any such real property included in the gross estate is located or, when the estate is involved in proceedings before the district court, with the court. Any such notice of release shall be in such form as prescribed by the secretary and may include use of or reference to the closing letter issued by the director or may be included as part of that closing letter.~~

~~79-15,110. District court to find settlement of all taxes prior to allowing final account.~~

~~No final account of a personal representative shall be allowed by the district court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account and already payable have been paid, and that all taxes which may become due on such estate have been paid or settled as hereinbefore provided.~~

79-15,111. Statute of limitations; notice of adjustments by internal revenue service. (a)

Except as otherwise provided in this section, the amount of any tax imposed by this act shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, or the tax as shown to be due on such return was paid, whichever is the later date, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. Where the assessment of any tax imposed under this act has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court but only if begun within one year after the period of limitation as provided in this act.

(b) For the purposes of this section, a return of tax required under this act filed before the last day prescribed by law shall be deemed to be filed on such last day and any tax shown to be due on such return and paid before the last day prescribed by law shall be deemed to be paid on such last day.

(c) In the case of a false or fraudulent return or affidavit with intent to evade tax or in the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun at any time.

(d) No refund or credit shall be allowed by the director after three years from the date the return was filed, or one year after an assessment is made, whichever is the later date, unless before the expiration of such period a claim therefor is filed by the personal representative.

(e) In case a personal representative has made claim for a refund, such personal representative shall have the right to commence a suit for the recovery of the same at the expiration of six months after the filing of the claim for refund, if no action has been taken by the director.

(f) Any personal representative of an estate of a decedent who has been notified of any adjustment by the internal revenue service shall notify the director within 90 days of the date such adjustment is agreed to or becomes final between the estate and the internal revenue service. Such adjustments shall be reported by filing an amended return and a copy of the revenue agent's report detailing such adjustments, along with any other statements or documents as may be necessary to explain and support the adjustments.

(1) Notwithstanding the provisions of subsections (a) or (d) of this section, additional tax may be assessed and proceedings in court for collection of such taxes may be commenced and any refund or credit may be allowed by the director of taxation within 180 days following receipt of any such report of adjustments by the Kansas department of revenue. No assessment shall be made nor shall any refund or credit be allowed under the provisions of this paragraph except to the extent the same is attributable to changes in the estate due to adjustments indicated by such report.

(2) In the event of failure to comply with the provisions of this subsection, the statute of limitations shall be tolled.

79-15,112. Disposition of revenue. The director shall pay to the state treasurer on Monday of each week the entire amount of revenue collected or received during the previous week from the tax imposed by this act less amounts withheld as provided in K.S.A. 79-15,113, and amendments thereto, which amount shall be credited to the state general fund, and shall be applicable to such purposes as the legislature by law may direct.

79-15,113. Estate tax abatement refund fund; payment of abatements and refunds; interest. A refund clearing fund, designated estate tax abatement refund, not to exceed \$50,000 shall be set apart and maintained by the director of taxation from estate tax collections and held by the state treasurer for the prompt payment of all abatements and refunds. If the director of taxation finds that claim for refund duly filed by a personal representative should be allowed, or if a court upon a final judgment shall find that the estate tax, penalty or interest paid by a personal representative is in excess of the amount legally due, then the director of taxation shall issue the director's vouchers to the director of accounts and reports for the refund to the personal representative of such tax, penalty or interest together with interest provided for hereinafter. Upon receipt of such voucher properly executed and endorsed, the director of accounts and reports shall issue the director's warrants to the state treasurer for the payment to the personal representative out of the estate tax abatement refund fund. The director of taxation shall file a duplicate of such voucher and also a statement which shall set forth the reasons why such abatement or refund was allowed. Upon allowance of an abatement or refund of any tax, penalty or interest paid, interest shall be allowed and paid on the amount of such abatement or refund at the rate of ~~12% per annum~~ prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, from the date such tax penalty or interest was paid to the date the refund or abatement of estate taxes is made.

79-15,114. Tax imposed on generation skipping transfers; amount. Whenever the amount of the tax imposed upon a generation-skipping transfer by section 2601 of the internal revenue code is determined, a tax, equal to the maximum amount of the credit allowed against such tax by section 2604 of the internal revenue code, is hereby imposed upon the taxable estate of said decedent as of the date of such determination.

79-15,115. Same; proration of tax, when. When the property transferred subject to the tax imposed by K.S.A. 79-1541a shall consist of both property within and property without the state, the tax imposed shall be the percentage that the Kansas assets of the generation-skipping trust or generation-skipping trust equivalent bears to the total assets of the generation-skipping trust or generation-skipping trust equivalent.

79-15,116. Fees for copies of returns or affidavits; disposition. (a) The director of taxation shall fix and charge an amount pursuant to K.S.A. 45-218 and 45-219, and amendments thereto for furnishing certified copies of returns.

(b) All fees collected hereunder shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the state general fund.

79-15,117. Rules and regulations. The secretary of revenue shall adopt such rules and regulations as may be deemed necessary to carry out the purposes of this act.

79-15,118. Reports and returns; preservation; confidentiality, exceptions; performance of certain activities by administrative personnel unlawful; penalties for violations. (a) All reports and returns required under the provisions of the Kansas estate tax act shall be preserved for three years and thereafter until the director of taxation orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) of this section, subsection (g) of K.S.A. 17-7511, and amendments thereto, or 46-1106, and amendments thereto, it shall be unlawful for the director of taxation, or any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the value of any estate or any particulars set forth or disclosed in any report, return, federal return or federal return information required under the provisions of the Kansas estate tax act; and it shall be unlawful for the director of taxation, any deputy, agent, clerk of other officer or employee of the department of revenue engaged in the administration of the Kansas estate tax act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the attorney general or other legal representatives of the state. Nothing in this section shall prohibit the post auditor from access to all estate tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto. Nothing in this section shall be construed to prohibit the disclosure of the taxpayer's name, social security number, last known address and total tax liability, including penalty and interest, from estate tax returns to a debt collection agency contracting with the secretary of revenue pursuant to K.S.A. 75-5140 to 75-5143, inclusive, and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (d).

(d) Any violation of subsections (b) or (c) shall be a class B misdemeanor; and if the offender be an officer or employee of the state, such officer or employee shall be dismissed from office.

(e) Notwithstanding the provisions of this section, the secretary of revenue may permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an inheritance or estate tax, or the authorized representative of either, to inspect the estate tax returns made under the provisions of the Kansas estate tax act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in inheritance tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the Kansas estate tax act, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of the tax laws of such state, the state of Kansas or of the United States.

(f) Notwithstanding the provisions of this section, the estate tax return filed with respect to the estate of a decedent shall, upon written request, be open to inspection by or disclosure to: (1) The administrator, executor or trustee of such decedent's estate; and (2) any heir at law, next of kin or beneficiary under the will of such decedent or a donee or distributee of the decedent's property, but only if the secretary of revenue finds that such heir at law, next of kin, beneficiary, donee or distributee has a material interest which will be affected by information contained therein.

79-15,119. Application of act. The provisions of sections 1 through 18 of this act shall be applicable to the estates of all decedents dying after June 30, 1998. The provisions of article 15 of chapter 79 of the Kansas Statute Annotated in effect immediately before the effective date of this act shall be applicable to the estates of all decedents dying before July 1, 1998.

79-15,120. Reimbursement out of estate. If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the personal representative in their capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this act that so far as practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate prior to its distribution.

79-15,121. Liability of life insurance beneficiaries. Unless the decedent otherwise directs by will or trust, if any part of the gross estate on which tax has been paid consists of the proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the personal representative, the personal representative shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the personal representative shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed on federal form 706 under section 2056 of the internal revenue code (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section.

79-15,122. Liability of recipient of property over which decedent had power of appointment. Unless the decedent otherwise directs by will or trust, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041 of the internal revenue code, the personal representative shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the taxable estate. If there is more than one such person, the personal representative shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 of the internal revenue code (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 of the internal revenue code over the

amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

79-15,123. Right of recovery in the case of certain marital deduction property. (a)(1)

If any part of the federal gross estate consists of property the value of which is includible in the federal gross estate by reason of section 2044 of the internal revenue code (relating to certain property for which marital deduction was previously allowed), the personal representative shall be entitled to recover from the person receiving the property the amount by which

(A) the total tax under chapter 11 of the internal revenue code which has been paid, exceeds

(B) the total tax under chapter 11 of the internal revenue code which would have been payable if the value of such property had not been included in the gross estate.

(2) Paragraph (1) shall not apply with respect to any property to the extent that the decedent specifically indicates by will or trust an intent to waive any right of recovery with respect to such property.

(b) For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

(c) In the case of penalties and interest attributable to additional taxes described in subsection (a) and (b), rules similar to subsections (a), (b), and (c) shall apply.

79-15,124. Right of recovery where decedent retained interest. (a)(1)

If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 of the internal revenue code (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under chapter 11 of the internal revenue code which has been paid as

(A) the value of such property, bears to

(B) the taxable estate.

(2) Paragraph (1) shall not apply with respect to any property to the extent that the decedent by will or revocable trust specifically indicates an intent to waive any right of recovery under this provision with respect to such property.

(b) For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

(c) In the case of penalties and interest attributable to the additional taxes described in subsection (a), rules similar to the rules of subsections (a) and (b) shall apply.

(d) No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 of the internal revenue code applies (determined without regard to this section).

Session of 1998

As amended by the
Criminal Law Committee
October 2, 1998

HOUSE BILL No. 2819

By Committee on Judiciary

2-4

9 AN ACT concerning criminal procedure; relating to grants of immunity;
10 amending K.S.A. 22-3008, 22-3102 and 22-3415 and repealing the ex-
11 isting sections.
12

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

14 Section 1. K.S.A. 22-3008 is hereby amended to read as follows:
15 22-3008. (1) Whenever required by any grand jury, its presiding juror or
16 the prosecuting attorney, the clerk of the court in which the jury is im-
17 paneled shall issue subpoenas and other process to bring witnesses to
18 testify before the grand jury.

19 (2) If any witness duly summoned to appear and testify before a grand
20 jury fails or refuses to obey, compulsory process shall be issued to enforce
21 the witness' attendance, and the court may punish the delinquent in the
22 same manner and upon the same proceedings as provided by law for
23 disobedience of a subpoena issued out of the court in other cases.

24 (3) If any witness appearing before a grand jury refuses to testify or
25 to answer any questions asked in the course of the witness' examination,
26 the fact shall be communicated to a district judge of the judicial district
27 in writing, on which the question refused to be answered shall be stated.
28 The judge shall then determine whether the witness is bound to answer
29 or not, and the grand jury shall be immediately informed of the decision.

30 (4) No witness before a grand jury shall be required to incriminate
31 the witness' self. ~~The district judge may, if the judge determines that the~~
32 ~~interest of justice requires, grant any witness before the grand jury im-~~
33 ~~munity from prosecution or punishment on account of any matter con-~~
34 ~~cerning which the witness shall be compelled to testify. Prior to the grant~~
35 ~~of immunity, notice shall be given to the prosecuting attorney whose~~
36 ~~recommendations on the matter of the grant of immunity shall be heard~~
37 ~~by the judge before the grant of immunity is made.~~

38 (a) *The county or district attorney, or the attorney general, may at*
39 *any time, on behalf of the state, grant in writing to any person:*

40 (i) *Transactional immunity. Any person granted transactional im-*
41 *munity shall not be prosecuted for any crime which has been committed*
42 *for which such immunity is granted or for any other transactions arising*
43 *out of the same incident.*

HB 2819

2

1 (ii) *Use and derivative immunity. Any person granted use and deriv-*
2 *ative use immunity may be prosecuted for any crime, but the state shall*
3 *not use any testimony against such person provided under a grant of such*
4 *immunity or any evidence derived therefrom. Any defendant may file with*
5 *the court a motion to suppress in writing to prevent the state from using*
6 *evidence on the grounds that the evidence was derived from and obtained*

3. 7H

59-606. Execution and attestation; self-proved wills and codicils; affidavits; form.

Every will, except an oral will as provided in K.S.A. 59-608 and amendments thereto, shall be in writing, and signed at the end thereof by the party making the same, or by some other person in the presence and by the express direction of the testator and shall be attested and subscribed in the presence of such party by two or more competent witnesses, who saw the testator subscribe or heard the testator acknowledge the same. Such will, at the time of its execution or at any subsequent date during the lifetimes of the testator and the witnesses, may be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary by the acknowledgments thereof and the affidavits of the testator and the attesting witnesses, each made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths ~~under the laws of this state~~, such acknowledgments and affidavits being evidenced by the certificate, with official seal affixed, of such officer attached or annexed to such will in form and contents substantially as follows:

State of Kansas
County of _____ ss.

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me first duly sworn, said _____, testator, declared to me and to the said witnesses in my presence that said instrument is the testator's last will and testament, and that the testator had willingly made and executed it as the testator's free and voluntary act and deed for the purposes therein expressed; and the said witnesses, each on the witness' oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is the testator's last will and testament, and that the testator executed same as such and wanted each witness to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of each other and in the presence of the testator and at the testator's request, and that said testator at that time possessed the rights of majority, was of sound mind and under no restraint.

(Testator)

(Witness)

(Witness)

Subscribed, acknowledged and sworn to before me by _____, testator, and _____ and _____, witnesses, this _____ day of _____, A.D. _____.

(seal) (Signed) _____

(Official capacity of officer)

If an affidavit substantially in conformance with the affidavit described herein is executed at the time of the execution of the will, no other signatures of the witnesses or any other attestation clause is required.

A self-proved will, unless contested, shall be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. A self-proved will may be contested or be revoked, or be amended by a codicil in the same fashion as a will not self-proved. A codicil or the consent to take under the will by the spouse may be self-proved in the same manner as a will may be self-proved.

History: L. 1939, ch. 180, § 42; L. 1975, ch. 299, § 3; L. 1976, ch. 245, § 2; L. 1990, ch. 199, § 1; July 1.

3-72
3-74



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(785) 296-2256

January 14, 1999

To: Representative Mike O'Neal, Chair
House Judiciary Committee
and House Judiciary Committee members

From: Kathy Porter, Office of Judicial Administration *KP*

Re: Preliminary Draft of Proposed 1999 Legislation

Following is a list of bills respectfully requested for introduction during the 1999 Legislative Session by the Kansas Association of District Court Clerks and Administrators, the Kansas Association of District Judges, the Dispute Resolution Advisory Committee, and an individual judge. The Kansas District Judges' Association Executive Board has reviewed the bills and has voted to support all of the bills noted. With the exception of the bill noted as being requested by an individual judge, the bills were proposed and discussed by the legislative committees of the groups noted. All bills were further discussed at a meeting of the legislative chairs of all of the groups noted above.

Kansas Association of District Court Clerks and Administrators:

Opening Presentence Investigations in Misdemeanor Cases

The Kansas Association of District Court Clerks and Administrators respectfully requests the introduction of a bill providing that presentence reports in misdemeanor cases are open records, with the same exceptions applicable to presentence reports in felony cases. The intent of this proposed amendment to current law is to make uniform the availability of presentence reports in felony and misdemeanor cases. Currently, pre-sentence reports in felony cases are part of the court record and are open to the public, except that the official version, the defendant's version, the victim's statement, any psychological reports, and drug and alcohol reports shall be accessible only to the parties, the sentencing judge, the Department of Corrections, and, if requested, the Kansas Sentencing Commission. Presentence reports in misdemeanor cases are part of the record and are available to the defendant's attorney, but otherwise are sealed and opened only on order of the court.

House Judiciary

1-14-99

Attachment 4

The requested bill is identical to 1998 SB 552, which passed the Senate on a vote of 40 to 0, but died in the House Judiciary Committee. The Kansas Sentencing Commission was requested to provide support for this bill, and they agreed to do so at their December 29, 1998, meeting.

Jury Size and Number of Peremptory Challenges in Sex Predator Cases

The Kansas Association of District Court Clerks and Administrators respectfully requests the introduction of a bill providing for a 12-member jury and six peremptory challenges for both parties in sexually violent predator proceedings. Currently, jury size and the number of peremptory challenges are not specified for these proceedings.

This provision was included in 1998 SB 671 as it was introduced by the Attorney General's office, but this provision did not make it into the final version of the bill as enacted.

Kansas Association of District Court Judges:

Amending the Title "Administrative Judge" to "Chief Judge"

The Kansas Association of District Court Judges respectfully requests the introduction of a bill amending all current statutory references to the title "administrative judge" to "chief judge." The amendment is intended to provide clarity and to eliminate any confusion to the public resulting from the similarity of the titles "administrative judge" and "administrative law judge."

This bill was introduced during the 1998 Legislative Session and was passed by the Senate on a vote of 39 to 0. The bill died in the House Judiciary Committee.

Individual Judge:

Payment of Collection Costs

An individual judge respectfully requests the introduction of a bill including the provisions of 1998 SB 599, which dealt with district court collections. The bill would provide that the cost of debt collection be added to the court costs, fines, restitution, attorney reimbursement fees, and other charges which a court has ordered be paid to the court. Current law allows for privatized debt collection contracts, but the cost of the collection is deducted from the amounts collected. Therefore, the full amount ordered to be paid in restitution, fines, or other fees or charges is not paid to crime victims or to the state.

Senate Bill 599 received a hearing in the Senate Commerce Committee and passed the Senate Committee of the Whole, but did not receive a hearing in the House.

Alternative Dispute Resolution:

Amendments to Confidentiality of Proceedings Statute

The Dispute Resolution Advisory Committee respectfully requests the introduction of a bill clarifying that, in proceedings under the Dispute Resolution Act, the privilege of confidentiality may be claimed by parties to the proceeding or by the neutral person (the mediator). The confidentiality and privilege requirements of the Act would not apply to information that is reasonably necessary to allow investigations or actions for ethical violations against neutral persons. The neutral persons and staff of approved programs would not be bound by the confidentiality and privilege requirements as to information reasonably necessary to defend themselves in an action filed by a party. The confidentiality and privilege requirements would also not apply to reports to the court of threats of physical violence made by a party during the proceeding.

KP:ps



January 11, 1999

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Voice Mail Ex. 330

Hon. Mike O'Neal
Chair, House Judiciary Committee
Statehouse
Topeka Kansas 66612

Dear Mike,

Enclosed are requests for bill introductions by the Kansas Bar Association for the 1999 session. Several are a reintroduction of previous bills and others are new.

Once they are introduced formally, I would be glad to work out an arrangement for hearings.

Best Regards,

Ron Smith
General Counsel

cc Senator Emert
Members, House Judiciary Committee.
enc/

KBA Legislation Requests

1. **Dual Licensing Problems affecting the Attorney-Client privilege.** KU offers a dual license program where students can obtain a dual degree in law and a Masters in Social Work (MSW) in one four-year curricula. Other persons sometimes seek to have both teaching degrees and a J.D., or an MD/JD combination. KSA 38-1522, 39-1402 and 39-1431 require, among others, MSWs, doctors and teachers to report suspected instances of child abuse. The reporting requirement is based on the fact that a person is licensed as an MSW, a teacher or a doctor, *not because they are practicing social work, medicine or are teaching in the classroom*. As a result, persons with a J.D. and a listed second degree have to report child abuse even when that person is practicing law and required to keep client confidences. Our legislation would amend these statutes and require that when a person has a dual license and are practicing law, the reporting requirement does *not* apply.

For example, if a person licensed as an MSW and a JD is practicing social work, then the reporting requirement would apply because ethically a person cannot practice one profession and practice law at the same time. However, if they are practicing law, the fact they have other degrees does not make them report child abuse if the abuser is their client. The bill is enclosed.

- ~~2~~ **A reintroduction of 1998 HB 2677.** This legislation contains technical cleanup to the mediation statutes regarding confidentiality and privileges in certain dispute resolution processes in Kansas.
3. **Reintroduction of 1998 HB 2709,** the Uniform Child Custody Jurisdiction and Enforcement Act.
4. **Introduction of a new Limited Liability Company Code.** Kansas can claim one of the first Limited Liability Company codes in the nation after the concept was approved in Treasury Department regulations. The original Kansas statute was adopted before Delaware took any action and before Delaware became a leader in the effort to obtain wide acceptance of LLCs. Since that early adoption, the limited liability company has developed dramatically. The Internal Revenue Service has recognized the LLC as a viable form of organization with the tax attributes originally sought by its drafters. All 50 states now have an LLC statute. Since adoption by Kansas, our act has been modified on several occasions. Single member LLCs and check-a-box taxation concepts were adopted in 1998. In each case, the provisions tracked the Delaware LLC code, often verbatim. The bill is a product of a two year process of review by some of the best corporate lawyers in Kansas. A copy of the bill is enclosed.



State of Kansas

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TO: House Judiciary Committee
FROM: Attorney General Carla Stovall
RE: Bill Introductions
DATE: January 14, 1999

1. **Sexually Violent Predator Commitment** - Amend K.S.A. 59-29a01 *et al* would provide for additional changes in this law, in accord with the parameters approved by the United States Supreme Court in *State of Kansas vs. Leroy Hendricks*. Changes would include:
 - a) expanding the law to encompass even those inmates released back into the community;
 - b) eliminating the time line restrictions (i.e., the 90-day notification from the agency with jurisdiction to the multidisciplinary team and the Attorney General; the 30-day time line for the multidisciplinary team to meet, make an assessment and forward it to the Attorney General; and the 75-day time line for the Attorney General to review the case;
 - c) eliminating the Preamble and the definition of "predatory";
 - d) adding incest and aggravated incest to the list of sexually violent offenses contained in K.S.A. 59-29a02;
 - e) eliminating the Prosecutor's Review Committee, replacing it with the Evaluation Panel;
 - f) including language specifically forbidding any bail, bond or house arrest for any individual confined under the Act.
2. **Mistreatment of a Dependent Adult** - Amend K.S.A. 21-3437 to add reckless acts as a form of abuse, increase the severity level of abuse from level 6 person felony to level 5 person felony to match the punishment level for child abuse, and match the financial exploitation punishments to those of the theft statute.
3. **Statute of Limitations** - Amend K.S.A. 21-3106 to provide for a 5 year statute of limitations on all crimes other than murder, which can be commenced at any time, and crimes in which the Kansas public employees retirement system is a victim, which has a ten year statute of limitations.