

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, January 26, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Allen (E)
Senator Haley (E)
Senator Betts (E)
Senator Goodwin (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation and Kansas Peace Officers Association
Randy Hearrell, Kansas Judicial Council
Senator Kay O'Connor
Jim Pritchard, Emporia Police Department and Kansas Peace Officers Association
Representative Peggy Long-Mast
Detective Sgt. Lane Ryno (written)
Dan Riley, Chief Legal Council, Kansas Department of Agriculture
Richard Cram, Kansas Department of Revenue

Others attending:

See Attached List.

Chairman Vratil called for bill introductions. Kyle Smith, Kansas Bureau of Investigation, requested on behalf of the Kansas Law Enforcement Training Commission, a bill to help ensure the quality and integrity of Kansas law enforcement officers by requiring law enforcement officers to meet the highest standards. (Attachment 1)

The Chair called for Committee discussion, and having none opened the floor for a motion. Senator O'Connor made a motion to introduce the proposed legislation, seconded by Senator Donovan, and the motion carried.

Randy Hearrell, Kansas Judicial Council, appeared before the Committee and requested a bill recommended by the Judicial Council Death Penalty Advisory Committee that would amend K.S.A. 21-4635 and 21-4638 to provide that life without the possibility of parole instead of the "hard 50" be the sentence for persons who are convicted of capital murder but who do not receive the death penalty. (Attachment 2)

The Chair called for discussion on the proposed bill, and there was none. Senator Umbarger made a motion to introduce the bill, seconded by Senator Donovan, and the motion carried.

Senator Kay O'Connor requested a conceptual bill be introduced. The bill would put deadbeat parents under house arrest with work release if the parents are 90 days or more past due on child support payments. After brief discussion, the Chair called for a motion to introduce. Senator O'Connor moved that the conceptual bill be drafted and introduced, seconded by Senator Oleen, and the motion carried. (Attachment 3)

HB 2057 - Identity theft, defrauding for any benefit, not just economic

Chairman Vratil opened the hearing on **HB 2057**. Representative Peggy Long-Mast testified in support of the proposed legislation. She explained that she sponsored the bill, and that it would allow law enforcement to intervene and seek prosecution of identity theft before someone finds out the hard way that their good name and social security number have been abused. Representative Long-Mast stated that

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MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on January 26, 2004 in Room 123-S of the Capitol.

passing this legislation may prevent many from suffering great economic loss and complications in other areas of their life. (Attachment 4)

Kyle Smith, representing the Kansas Peace Officers Association, urged the Committee to pass **HB 2057**. He stated that normally identify theft is used as a means of committing fraud, but there are other motives and other victims than just the financial ones. Mr. Smith said whether the intent is to gain access to restricted information or merely to destroy an ex-spouse's credit rating, the harm to the victim can be equally devastating. He added that loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment frequently are experienced by the person whose identity is stolen, in addition to the loss of economic benefit. (Attachment 5)

Jim Pritchard, Emporia Police Department and the Kansas Peace Officers Association, spoke in favor of **HB 2057**. He requested a change that would make the language concerning identity theft more inclusive. Section 1, line 15, as drafted reads: "Identity Theft is knowingly and with intent to defraud for economic benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." The proposed change would include the "Intent to defraud for *any benefit, including but not limited to economic benefit, ...*". Mr. Pritchard gave several examples of intent to defraud that was not limited to economic benefit, and the repercussions of same as detailed in Mr. Pritchard's written testimony. (Attachment 6)

Chairman Vratil asked Kyle Smith to clarify the definition of identity theft relating to Subsection (a), line 15, which defines it as "knowingly and with intent to defraud for any benefit, obtaining, possessing,". He stated that there are two classes of punishment. One class is identity theft for economic benefit that is undefined. The Chairman asked if there needed to be a definition for identity theft for economic benefit, or more directly what is identify theft for economic benefit. Mr. Smith replied that there were some issues with the drafting, but by including the word "defraud" which has an economic flavor to it then the assumption of economic benefit was included. He gave a couple of examples. Mr. Smith said the changes are fairly simple, but the details are a little confusing at this point.

The Chair inquired about the phrase "knowingly and with intent to defraud", and why was there a need for the wording "for any benefit" in the language. He said there appeared to be an internal inconsistency in the language relative to saying economic benefit and any benefit. Mr. Smith responded that he wasn't claiming authorship on this bill, and that one or the other had to go. Representative Long-Mast offered that in the House discussion on **HB 2057**, the subject came up of giving a little more leniency in some cases relative to a minor's use of false identification to get into a drinking establishment. House members did not feel the penalty for that situation should be equal to the fraudulent use of false identification on a semi-permanent basis.

Chairman Vratil said he could understand the desire to distinguish between identify theft for economic benefit and identify theft for non-economic benefit, but felt there were some problems with the way the bill was drafted. If Mr. Smith's suggestion that using the word "defraud" has implications of economic benefits, then his definition was internally inconsistent. The Chair stated that there isn't a definition of identity theft for economic benefit, and asked what was identity theft for economic benefit. He gave examples of identity theft for non-economic benefit and examples of ways identity theft could be for economic benefit. He said there needed to be a better definition for identify theft for economic benefit. He requested Mr. Smith to work with Representative Long-Mast to come up with some alternative language.

Lane Ryno, Detective Sargent, Emporia Police Department, and Assistant Legislative Committee Chairman, Kansas Police Officer Association, submitted written testimony in support of **HB 2057**. (Attachment 7)

Having no other conferees to appear on **HB 2057**, Chairman Vratil closed the hearing.

SB 141 -Phasing in the use of administrative hearings over years

Chairman Vratil opened the hearing on **SB 141**, and briefly explained the bill. Randy Hearrell, Kansas

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MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on January 26, 2004 in Room 123-S of the Capitol.

Judicial Council, testified as a proponent for the bill. Mr. Hearrell said the proposed legislation would change the Kansas Administrative Procedure Act (KAPA) concerning state agencies and hearing officers (which are called presiding officers). He explained that beginning July 1, 2005 and concluding July 1, 2009, all state agencies, boards and commission subject to KAPA would be "phased-in" to the requirement that the Office of Administrative Hearings (OAH) provide presiding officers for hearings. Mr. Hearrell stated that on and after July 1, 2009 the OAH would be a separate state agency.

Mr. Hearrell gave background and historical information regarding administrative proceedings of state agencies. He said that approximately one-half of the proceedings are filed in accordance with KAPA. He explained that often the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. He said that typically such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis. Mr. Hearrell added that if the presiding officer is not the agency head, the presiding officer renders an initial order, subject to review by the agency head on the agency head's motion or upon petition by any party. He stated that under **SB 141**, attorney hearing officers and support personnel from affected agencies, would transfer to the Office of Administrative Hearings along with all related property and records. The state agencies would be required to use hearing officers from the OAH to preside as hearing officers for their administrative hearings under KAPA.

Mr. Hearrell explained that the basic purpose of a central Office of Administrative Hearings is to give administrative hearing officers independence from agencies over whose proceedings they preside. He added that such independence will promote fairness in the hearing process and a perception of greater fairness, independence and impartially if the presiding office is not dependent on the agency for continued employment or advancement. Mr. Hearrell stated that the central hearing office would allow cost reduction by allowing a more even distribution of workload. It would likely promote consistency among agency proceedings, and consistent policies on a number of issues common to state agencies. He also included in his testimony arguments against OAH which included that first, "We are doing a good job"; and second, creation of a central office would result in loss of agency expertise. He shared the opinion of the advisory committee which believes it is not unfair to place the burden on the agency to make known to the administrative hearing officer, and all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. He also went over the costs of the central panel system and projected savings thereto. These savings are detailed in his written testimony. (Attachment 8)

Mr. Hearrell furnished copies of the Legislative Post Audit's Performance Audit Report as information which also reported costs. A copy of the Audit Report is available for access in the Legislative Research Department and Chairman Vratil's office. He referred to the Fiscal Note for **SB 141** which showed an estimated cost of \$236,620 based on needs estimated for FY 2005 only. (Attachment 9)

Mr. Hearrell offered balloon amendments to **SB 141**, and briefly explained the proposed amendments. (Attachment 10)

Following brief Committee questions and discussion, the Chairman called upon Richard Cram, Department of Revenue (DOR), who testified as a neutral conferee on **SB 141**. He stated that this bill proposed to create an office of administrative hearings independent of the Department of Administration which raised concerns for his department. He said their main concern was whether **SB 141** was being interpreted properly, and referred to Sections 3, 4 and Subsection 34(h)(4). He said DOR understands that this bill is intended to apply only to personnel involved in KAPA hearings. The DOR has no personnel exclusively dedicated to KAPA hearings. He said DOR officials who currently preside over KAPA administrative hearings and the support staff assisting them, perform these duties along with other assigned tasks. He gave examples of the various departments in DOR, and the problems they would incur if personnel was transferred to OAH.

In conclusion, Mr. Cram said that if DOR correctly reads **SB 141** as not requiring KAPA hearings presided over by various division or bureau directors to be moved to the Office of Administrative Hearings, then this bill would have minimal impact on the Department. However, he stated if DOR is incorrectly interpreting this bill, DOR requests that the bill be amended to clarify that the KAPA hearings

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MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on January 26, 2004 in Room 123-S of the Capitol.

currently presided over by the Director of ABC, Director of Taxation, and Director of Motor Vehicles are not to be affected by this legislation, and that no DOR personnel or resources are to be transferred to the Office of Administrative Appeals. (Attachment 11)

Following brief questioning and discussion, the Chairman encouraged Committee members to study KJC's submitted balloon amendments in preparation for working the bill. Chairman Vratil closed the hearing on **SB 141**.

The Chairman presented the minutes covering the January 14, 2004 meeting. Senator Donovan moved to approve the minutes as written, seconded by Senator Schmidt, and the motion carried.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is January 27, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon., Jan. 26, 2004

NAME	REPRESENTING
Christina Collins	KMS
Mark Braun	Dept of Admin - OAH
Malee Carpenter	Kansas Chamber
Andy Shaw	KCTAA
Ed Mey	Hon Law Firm
Kathy Porter	Judicial Branch
Julia Butler	KSC
Brenda Harman	KSC
Patricia Biggs	KSC
Deane Albert	KDOR
Carman Aldritt	"
Richard Cram	"
John Cassidy	KDOT
Kyle Smith	KBI
Rep. Peggy Long Mast	Legislator
Jim Pritchard	Emporia Police Dept.
Tom Burgess	KHM
Jeff Botkoby	Kansas Sheriffs Assn
Mack Smith	KS ST Bd of Mortuary Arts



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Bill Request
Kansas Law Enforcement Training Commission
Officer Integrity Enhancement

Kyle G. Smith
Before the Senate Judiciary Committee
January 15, 2004

Chairman Vratil and Members of the Committee,

On behalf of the Kansas Law Enforcement Training Commission, I am here today to request introduction of legislation that will help ensure the quality and integrity of Kansas law enforcement officers.

There are two parts to this request, but I believe they can be considered as one bill as having only one topic – KLETC's ability to ensure Kansas law enforcement officers meet the highest standards.

The first part would assist the Commission in identifying unqualified applicants for a law enforcement commission. Felony convictions, even if expunged, currently disqualify a person from being certified or serving as a law enforcement officer in Kansas. However, the expungement statute does not allow the agency that certifies officers access to those expunged records. Our proposal would simply add the KLETC to those regulatory boards that have such access.

The second part is to amend current law to mandate a form with certain information be provided to the KLETC whenever a certified law enforcement officer leaves employment. The purpose of this legislation would be to enable other law enforcement agencies that are considering hiring that officer to accurately be apprised of the circumstances as to why the previous employment was terminated. Unfortunately, some agencies are reluctant to divulge problems with an employee that led to the firing or termination, normally out of fear of litigation. By requiring the information be available to potential new employers, this legislation will keep 'bad cops' from drifting from one agency to another without their previous bad acts being discovered. Agencies contemplating hiring such an officer will have access to this essential information and public safety will be better served.

Below are drafts that we've prepared to assist the Revisor's Office and the Committee in understanding the proposal. I'd be happy to answer any questions.

Senate Judiciary

1-26-04

Attachment 1

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

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(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2002 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(F) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(G) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(H) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-1252 and amendments thereto; or

(I) in any application for a commercial guide permit or associate guide permit under K.S.A. 32-964, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 74-5602, and amendments thereto;

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

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(12) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged; or

(13) the department of wildlife and parks and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a permit as a commercial guide or associate guide under K.S.A. 32-964, and amendments thereto.

(14) the Kansas law enforcement training commission and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer under K.S.A. 74-5601 et seq., and amendments thereto.

‘Gypsy’ Cops Amendment

K.S.A. 74-5611a. Central registry. The director shall establish and maintain a central registry of all Kansas police officers or law enforcement officers. The director shall provide forms for registration and shall refuse any registration not submitted on such form in full detail. Within 30 days of appointment, election or termination, every city, county and state agency, every school district and every community college shall submit the name of any person appointed or elected to or terminated from the position of police officer or law enforcement officer within its jurisdiction. *Upon termination the agency head shall include an explanation of the circumstances under which the officer resigned or was terminated, in a format adopted by the director. Said termination report shall be available to any law enforcement agency to which the terminated officer later applies for a position as a police officer or law enforcement officer.*



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: Senate Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: January 26, 2004

RE: Bill request Re Life Without the Possibility of Parole

The Judicial Council Death Penalty Advisory Committee ~~Advisory Committee~~ recommends that K.S.A. 21-4635 and 21-4638 be amended to provide that life without the possibility of parole instead of the "hard 50" be the sentence for persons who are convicted of capital murder but who do not receive the death penalty.

A draft of the proposed legislation is attached..

Senate Judiciary
1-26-04
Attachment 2

2004 Senate Bill No. _____

1 New section 1. A defendant who is sentenced to imprisonment for life without the
2 possibility of parole shall not be eligible for parole, probation, assignment to a community
3 correctional services program, conditional release, postrelease supervision, or suspension,
4 modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without
5 the possibility of parole, the court shall commit the defendant to the custody of the secretary of
6 corrections and the court shall state in the sentencing order of the judgement form or journal entry,
7 whichever is delivered with the defendant to the correctional institution, that the defendant has been
8 sentenced to imprisonment for life without the possibility of parole.

9
10 Section 2. 21-4635 is hereby amended to read as follows: 21-4635. (a) Except as provided
11 in K.S.A. 21-4634 and amendments thereto, if a defendant is convicted of the crime of capital
12 murder and a sentence of death is not imposed, or if a defendant is convicted of murder in the first
13 degree based upon the finding of premeditated murder, the court shall determine whether the
14 defendant shall be required to serve a mandatory term of imprisonment of 40 years ~~or~~ for crimes
15 committed ~~on and after~~ prior to July 1, 1999, a mandatory term of imprisonment of 50 years or
16 sentenced as otherwise provided by law for crimes committed on or after July 1, 1999 but prior to
17 July 1, 2004 or a mandatory sentence of life without the possibility of parole for crimes committed
18 on or after July 1, 2004.

19 (b) In order to make such determination, the court may be presented evidence concerning any
20 matter that the court deems relevant to the question of sentence and shall include matters relating to

1 any of the aggravating circumstances enumerated in K.S.A. 21-4636 and amendments thereto and
2 any mitigating circumstances. Any such evidence which the court deems to have probative value
3 may be received regardless of its admissibility under the rules of evidence, provided that the
4 defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of
5 aggravating circumstances as the state has made known to the defendant prior to the sentencing shall
6 be admissible and no evidence secured in violation of the constitution of the United States or of the
7 state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall
8 be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the
9 evidentiary presentation, the court shall allow the parties a reasonable period of time in which to
10 present oral argument.

11 (c) If the court finds that one or more of the aggravating circumstances enumerated in K.S.A.
12 21-4636 and amendments thereto exist and, further, that the existence of such aggravating
13 circumstances is not outweighed by any mitigating circumstances which are found to exist, the
14 defendant shall be sentenced pursuant to K.S.A. 21-4638 and amendments thereto; otherwise, the
15 defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory
16 aggravating circumstances which it found. The court may make the findings required by this
17 subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 21-
18 4638 and amendments thereto notwithstanding contrary findings made by the jury or court pursuant
19 to subsection (e) of K.S.A. 21-4624 and amendments thereto for the purpose of determining whether
20 to sentence such defendant to death.

1 Section 3. K.S.A. 21-4638 is hereby amended to read as follows: 21-4638 When it is
2 provided by law that a person shall be sentenced pursuant to this section, such person shall be
3 sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification
4 or reduction of sentence. Except as otherwise provided, in addition, a person sentenced pursuant to
5 this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40
6 years' imprisonment shall not be reduced by the application of good time credits. For crimes
7 committed on and after July 1, 1999, but prior to July 1, 2004, a person sentenced pursuant to this
8 section shall not be eligible for parole prior to serving 50 years' imprisonment, and such 50 years'
9 imprisonment shall not be reduced by the application of good time credits. For crimes committed
10 on or after July 1, 2004 a person sentenced pursuant to this section shall not be eligible for parole.

11 Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the
12 custody of the secretary of corrections and the court shall state in the sentencing order of the
13 judgment form or journal entry, whichever is delivered with the defendant to the correctional
14 institution, that the defendant has been sentenced pursuant to K.S.A. 21-4638 and amendments
15 thereto.

Senator Kay O'Connor

January 26, 2004 - Conceptual Bill Introduction

Bill to put deadbeat parents under house arrest with work release for parents who are 90 days or more past due on child support payments.



TOPEKA

HOUSE OF
REPRESENTATIVES

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COMMITTEE ASSIGNMENTS
VICE-CHAIR: HEALTH & HUMAN
SERVICES
UTILITIES
JUDICIARY

**TESTIMONY ON HB 2057
SENATE JUDICIARY COMMITTEE**

January 26, 2004

Thank you Chairman Vratil and fellow members of the Senate Judiciary Committee. I really appreciate the time that you are giving me to present to you a problem that is currently affecting the lives of many of our Kansas citizens as well as a helpful resolution. As a matter of fact, to quote from the Kansas Insurance Letter January 30, 2002, "43 percent of the consumer fraud complaints received by the Federal Trade Commission are from people victimized by identity theft. Observers say the actual number could be as high as 750,000 a year."

As many of you know, I have been employed in a staffing agency for several years in the past and during that time a problem came to my attention that really needs to be addressed. I was approached by Officer Jim Pritchard of the Emporia Police Department about a case that he was working on that pertained to someone using false identification. As we worked together to help address the case, Jim explained to me that this was not an isolated case and they currently can not attempt to prosecute the offender until economic loss has been suffered although they often are able to make the arrest under a separate violation. HB 2057 simply allows the law enforcement of our state to intervene and seek prosecution of identify theft before someone has found out the hard way their good name and social security number is being abused.

Passing this legislation may prevent many from suffering great economic loss and perhaps complications in many other areas of life by earlier intervention. I appreciate the efforts of officer Pritchard and others who are trying to protect citizens from such fraud. They will be better able to explain how this legislation will help with earlier intervention. With that, I am happy to stand for questions.

Senate Judiciary

1-26-04
Attachment 4

Kansas Peace Officers Association

Testimony in Support of HB 2057

Before the Senate Judiciary Committee

Kyle G. Smith

On behalf of the Kansas Peace Officers Association

January 26, 2004

Chairman Vratil and Members of the Committee,

On behalf of the Kansas Peace Officers Association we would urge your passage of HB 2057. While normally thought of as a means of committing fraud, identity theft can have other motives and other victims than just the financial ones.

Whether the intent is to gain access to restricted information or 'merely' to destroy an ex-spouses credit rating, the harm to the victim can be equally devastating. Even in a financially motivated case of identity theft, the person whose identity has been stolen can be as much or more of a victim than the merchant or institution who suffered the economic loss. Loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment frequently are experienced by the person whose identity was usurped – even though some other 'victim' suffered the loss of 'economic benefit'. One of our best special agents was almost not hired because our background check revealed extensive problems – all of which turned out to be the result of identity theft.

Thank you for your attention and I would be pleased to stand for any questions.

Senate Judiciary

1-26-04

Attachment 5



Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

Chairperson and Members of the Senate Judiciary Committee
Capital Building
Topeka, Kansas

My name is Jim Pritchard and I am a police officer for the Emporia Police Department. Please accept my written testimony in support of House Bill 2057. It has come to my attention that at times the current statute concerning Identity Theft is not as inclusive as I believe it should be. The current statute reads: "Identity Theft is knowingly and with intent to defraud for *economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." The proposed change would include the "Intent to defraud for *any benefit, including but not limited to economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or person identification number of another person, other than that issued lawfully for the use of the possessor." Based on individual calls I have responded to, I believe that this change is badly needed.

One example concerned an illegal alien who had purchased a social security card. With this social security card and other identification, this person was able to obtain a Missouri Identification card with his photo on it but under the false name. Once this person had a *valid* state issued identification card, it was not difficult to obtain employment and begin obtaining credit cards under the assumed name. At least nine credit cards under the assumed name were seized.

A second example involved a lady who reported that her husband was having difficulty with finding a job. She said someone had used her husbands' social security number and had obtained a driver's license in two different states. For whatever reason, the driver's licenses had been suspended. She said her husband had his Texas identification card but could not get a Kansas driver's license because the computer system showed license suspensions.

Senate Judiciary

1-26-04
Attachment 6

This lady has also shown me letters from the Internal Revenue Service stating that her husband owed almost \$11,000.00 in taxes. She told me that someone had used her husband's social security number and name to gain employment. This had apparently occurred at several different locations. The Internal Revenue Service was notifying her husband that he had failed to file tax returns and pay his taxes.

This lady further told me that they had been turned down for a car loan because someone using her husband's name and social security number had given them a bad credit rating. This lady said one item involved a loan for \$15,000.00 that had been defaulted on. The lady told me that she was going to need an attorney to try and get the matters cleared up. This will no doubt take a good deal of time and money to accomplish this. Obviously there is a victim of an injustice here. It would be hard to prove a crime was committed under the current statute 21-4018.

Sometime back, I was in the process of bonding out a prisoner for domestic violence and realized he had accidentally signed two different names. During the course of determining who he was, I found a Missouri identification card with his assumed name and his photograph. There was also a phone card under the assumed name. He had been working at a business and had assumed someone else's name and social security number. This person was also an illegal alien. Another concern with this case is that this person was developing criminal history under someone else's name.

Based upon the examples cited above, I would certainly appreciate any and all consideration for the passage of HB 2057.

Thank you:

Officer Jim Pritchard
Emporia Police Department
Kansas Peace Officer's Association



Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

Senate Judiciary Committee:

Chairman and members:

The Emporia Police Department and the Kansas Peace Officer Association would support the passage of HB 2057.

The reasons for this support are several. At the current time to show a violation of the statute regarding **Identity Theft**, *K.S.A. 21-4018*, it has to be proven the motive for using someone else's name would be to create an **Economic Benefit** for the violator.

This is all well and fine, but there are several other reasons people "steal identities", and create hardships for the victims.

Identities are stolen by people who have a list of traffic violations, so they can obtain new Driver's Licenses without records. Of course eventually they accumulate more violations, leaving the victim without insurance and a suspended Driver's License, through no fault of their own.

Identities have also been stolen by people committing crimes, and when they get caught, they use the identity they have stolen to give to the police. What happens next? The victim has a criminal record and probably a warrant for their arrest, for something they didn't do, nor know anything about.

I recently worked a case where someone with a stolen identity cosigned on an auto loan. Even though no payments were missed, the victim in this case tried to buy a house, but was turned down on her loan application because she supposedly had too much credit outstanding, in relation to her income at the time. In reality she did not owe any debts, but her credit record reflected she had cosigned on the auto loan. She was unable to purchase the house because of the application denial. No **Economic Benefit** for the violator could be shown.

People use "stolen identities" to obtain employment under false names. This is done at times to hide a criminal history, which would jeopardize the chances of being hired. Prosecutors around the state maintain this action does not fulfill the definition of **Economic Benefit** in itself, because the only **Economic Benefit** comes from working at the job, not getting it in the first place. This in

Senate Judiciary
1-26-04
Attachment 7



THE CITY OF
EMPORIA

POLICE DEPARTMENT

518 Mechanic PO Box 928
Emporia, KS 66801
620-342-1766 Fax 620-343-4228

Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

turn creates problems for the victim with the I.R.S., when the violator fails to pay their income tax.

All law enforcement asks is for a change in the current statute to read *any benefit*, instead of *economic benefit*. This would give law enforcement a better tool to deal with this type of activity, which seems to be on the increase

Thanks for your consideration!

Lane Ryno. Det. Sgt.
Emporia Police Department
Assistant Legislative Committee Chairman, K.P.O.A.

**JUDICIAL COUNCIL TESTIMONY
ON 2003 SB 141**

INTRODUCTION

Senate Bill 141 makes changes to the Kansas Administrative Procedure Act (KAPA) concerning state agencies and hearing officers (which are called presiding officers). Beginning July 1, 2005 and concluding July 1, 2009, all state agencies, boards and commissions subject to KAPA will be "phased-in" to the requirement that the Office of Administrative Hearings (OAH) provide presiding officers for their hearings. On July 1, 2009, the final group of agencies, board and commissions will be "phased-in." On and after July 1, 2009, the OAH will be a separate state agency.

HISTORY

The current Office of Administrative Hearings was established July 1, 1998, by the provisions of K.S.A. 75-37,121. The office is charged with the responsibility of conducting all adjudicative hearings for SRS. The Office of Administrative Hearings may also conduct adjudicative hearings for other governmental entities. The office was initially staffed by transferring all of the staff of SRS Administrative Hearings Section to the Office of Administrative Hearings. That staff consists of eleven employees, the director, five attorneys functioning as presiding officers and five support staff. The physical location of the current office is 1020 SW Kansas Avenue, Topeka, Kansas. In addition to meeting the responsibility mandated by statute, the Office of Administrative of Hearings has been retained by the Department of Administration (debt set off hearings), the Department of Aging, the Animal Health Department, the Board of Behavioral Sciences, the Department of Commerce and Housing, KPERS, the Juvenile Justice Authority, the Board of Cosmetology, the Board of Veterinary Examiners, the Civil Service Board, the Department of Agriculture, and the Dental Board to provide presiding officers.

Bills to expand the OAH have been passed by the House of Representatives in 1995 (HB 2213), 1999 (HB 2126) and in 2002 (HB 2488). In addition, such legislation has received favorable recommendations from the Legislative interim committees in 1997 and 2001, and a favorable report from Legislative Post Audit in March 2001. The 1995 and 1999 bills were drafted to immediately transfer all hearings of KAPA agencies to the OAH. In 2001, the bill was redrafted to phase-in the transfer of the responsibility for such hearings over a five-year period, and SB 141 also phases in the transfer and delays until July 1, 2005 the beginning of such transfer.

BACKGROUND

Approximately one-half of administrative proceedings of state agencies are filed in accordance with KAPA. Often, the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. Typically, such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis.

If the presiding officer is not the agency head, the presiding officer renders an initial order. An initial order is subject to review by the agency head on the agency head's motion or upon petition by any party. Under SB 141, attorney hearing officers and support personnel from affected agencies will be transferred to the Office of Administrative Hearings, along with all related property and records. These state agencies will be required to use hearing officers from the OAH to preside as hearing officers for their administrative hearings under KAPA.

THE ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

The Administrative Procedure Advisory Committee of the Judicial Council is comprised of state agency lawyers and private attorneys who regularly represent private parties before state agencies. The advisory committee was responsible for the drafting of the Kansas Administrative Procedures Act (K.S.A. 77-501 *et seq.*) and the Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA) (K.S.A. 77-601 *et seq.*). These acts were adopted by the Legislature in 1984 and have worked well, both for the public and state agencies.

KAPA and KJRA generally follow the Uniform Law Commissioners 1981 model state administrative procedure act, with modifications appropriate for Kansas. A feature of the model act

which was not adopted in 1984 related to an Office of Administrative Hearings. Although a majority of the members of the advisory committee have long favored creation of an Office of Administrative Hearings, the issue was not submitted to the 1984 legislature due to the concern that the debate over a central office might impede adoption of the KAPA and KJRA. The proposed bill generally follows the relevant provisions of the 1981 model state act.

REASONS FOR STATE CENTRAL OFFICE

The basic purpose of a central Office of Administrative Hearings is to give administrative hearing officers independence from agencies over whose proceedings they preside. Such independence will promote fairness in the hearing process and a perception of greater fairness, independence and impartiality if the presiding officer is not dependent on the agency for continued employment or advancement.

The central hearing office system consolidates a large number of hearing units into a professional, well-managed agency. This provides efficiency in implementing management systems for quality assurance, better performance evaluations, streamlined hearing processes, better training (including cross-training), opportunities for peer consultation and the opportunity to develop a code of professional ethics.

The central hearing office allows cost reduction by allowing a more even distribution of workload. There is also potential that use of independent hearing officers will cause agencies to more closely evaluate cases and perhaps promote settlements, thus reducing the number of hearings. A central office would likely promote consistency among agency proceedings and consistent policies on a number of issues common to state agencies.

Most states have adopted some form of a central hearing office and their experience is the central office has achieved cost efficiencies. The issue of cost is discussed later in this testimony.

ARGUMENTS AGAINST OAH

As you can see from the history of this concept, a central OAH has been considered by the legislature a number of times. The arguments against it have always been that first, "We are doing a good job"; and secondly, creation of a central office will result in loss of agency "expertise."

Some agencies have expressed concern that a central office will result in a loss of agency "expertise." To the extent this concern relates to the inability to reflect expertise through policy

implementation, it is reduced by the recommended authority of the agency head to review orders rendered by administrative hearing officers. To the extent the concern relates to loss of expertise of the hearing officer, the personnel transferred to the central office will bring along with them the special knowledge of each agency's type of cases, regulations and statutes, and a central office offers the opportunity to impart that specialized knowledge to other administrative hearing officers through cross training. In addition, the OAH has authority to contract with an outside hearing officer if necessary.

In the opinion of the advisory committee, it is not unfair to place the burden on the agency to make known to the administrative hearing officer, and all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. Concerns with expertise of the administrative hearing officer should be balanced against concerns with the impartiality of the administrative hearing officer.

EXPANSION PLAN UNDER SB 141

An incremental expansion of the responsibilities of the Office of Hearing examiners is contained in the bill. The expansion would take place over a period of five years. Most years, one or two cabinet level agencies would be added to the office. This allows for manageable expansion. In addition to the cabinet level agency, a group of small boards and commissions would be added each year.

Year One (July 1, 2005)

Behavioral Sciences Regulatory Board
Department of Administration
Department of Agriculture
Department of Health and Environment
Department of Social and Rehabilitation Services
Juvenile Justice Authority
Kansas Animal Health Department
Kansas Board of Pharmacy
Kansas Dental Board

Kansas Department on Aging
Kansas Insurance Department
Kansas Public Employees Retirement System
Kansas Water Office
State Board of Cosmetology
State Board of Veterinary Examiners

Year Two (July 1, 2006)

Board of Examiners in Optometry
Board of Nursing
Emergency Medical Services Board
Emergency Medical Services Council
Kansas Board of Barbering
Kansas Board of Examiners in Fitting & Dispensing of Hearing Aids
Kansas Human Rights Commission
Kansas Real Estate Commission
Real Estate Appraisal Board
State Board of Mortuary Arts

Year Three (July 1, 2007)

Consumer Credit Commissioner
Kansas Department of Wildlife and Parks
Kansas Lottery
Kansas Racing and Gaming Commission
Kansas State Banking Board
Office of the Securities Commissioner of Kansas
Pooled Money Investment Board
State Board of Healing Arts
State Board of Tax Appeals
State Board of Technical Professions

State Department of Credit Unions
State Treasurer

Year Four (July 1, 2008)

Agriculture Labor Relations Board
Board of Accountancy
Board of Adult Care Home Administrators
Department of Human Resources
Department of Revenue
Kansas State Grain Inspection Department
Kansas Wheat Commission
State Conservation Commission
State Corporation Commission

Year Five (July 1, 2009)

All Other KAPA Hearings, which includes the Secretary of State, the Insurance Department and other miscellaneous boards.

COSTS

Proponents of the central panel system maintain that the system reduces costs by reducing staff and allowing for central computerization. Maryland, Minnesota, Missouri, New Jersey, Tennessee and Wisconsin all realized savings as a result of implementing a central hearing officer system.

The March 2001 Legislative Post Audit Report states that Texas reported that by transferring six large agencies' hearings to the centralized administrative hearing office, the state realized an 18% saving which was \$600,000.

In Kansas, there may be some unanticipated savings. An example is that the FY 2004 budget eliminated the Appeals Section of the Department of Health and Environment. That Section had a budget of \$150,000 and 2.5 FTE's. Functions of that office were transferred to the OAH. OAH contracted to provide all hearing services for \$50,000 in FY 2004, a savings of \$100,000. Had SB 141 passed last year, the passage of the bill would have been credited with such savings.

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

May 2, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 141 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 141 is respectfully submitted to your committee.

The existing Office of Administrative Hearings (OAH) in the Department of Administration conducts all adjudicative hearings for the Department of Social and Rehabilitation Services. In addition, OAH currently conducts adjudicative hearings for a number of other governmental agencies under contract with those agencies. SB 141 would extend the scope of responsibilities of the OAH to require that the presiding officer for any hearing subject to the Kansas Administrative Procedure Act (KAPA) be the agency head, one or more members of a board or commission, or a presiding officer assigned by the OAH. The additional responsibilities would be phased in over a five-year period. Each year a new group of agencies with "KAPA" hearings would be subject to SB 141. The bill provides that, at the beginning of the year in which an agency becomes subject to the new law, all presiding officers in the administrative hearings section of that agency and their support staff would be transferred to the OAH. In FY 2008, the fifth year of implementation, the bill would establish an independent agency called the Office of Administrative Hearings. SB 141 uses the term "presiding officer" instead of "administrative law judge." It permits non-attorneys who are supervised directly by an attorney to act as presiding officers.

The fiscal effect of SB 141 cannot be estimated with accuracy for several reasons. For example, there is insufficient information available on the current staffing in agencies dedicated to adjudicative processes, and the number and type of KAPA hearings is unknown. Moreover, the bill contains an option for an agency head to conduct hearings rather than use the OAH, thus complicating the assessment of staffing needs. Nonetheless, the fiscal effect is expected to be significant. By FY 2008, the Office of Administrative Hearings would be an independent agency. As such, it would have to be budgeted for sufficient presiding officers, support staff,

and other operating expenditures to function independently from the Department of Administration. The office would expand over the five-year phase-in until it was capable of handling the hearings of the more than 40 agencies currently subject to KAPA. The bill makes provision for the transfer of presiding officers in the "administrative hearings section" of any affected state agency. However, because there are presumed to be few positions to transfer under this provision, the OAH staff would likely have to be increased at an additional cost to the state.

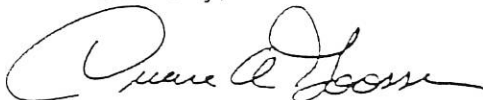
Although an accurate and complete fiscal note is not possible for the reasons indicated, the Department of Administration identifies the main factors that would have a bearing on the fiscal effect of the bill. Any significant expansion of the OAH would require modifications to the space arrangements, incurring moving costs and the probability of increased lease or rental charges depending on the amount of space involved. There would be the need for an integrated and automated information system for managing the hearing process and establishing a billing system. And there could be a need for video conferencing capabilities. The anticipated cost of such a system is \$18,500 for initial implementation, with ongoing charges that would depend on the type of line installed, the geographical areas that would be connected to the system, and the frequency of use.

Beginning in FY 2005, it is estimated that 2.0 presiding officers, 1.0 Information Technology Consultant II, and 1.0 Senior Administrative Assistant would need to be added for the OAH. The costs are outlined in the following table:

2.0 Presiding Officers	\$ 98,676
Information Technology Consultant II	36,816
Secretary II	20,509
Benefits	45,719
Equipment for the Positions	16,400
Information System	<u>18,500</u>
Total	\$236,620

These costs are based on estimated needs for FY 2005 only. Other positions and the attendant costs would need to be added at each stage of the phase-in. The OAH would be authorized to bill agencies for the use of presiding officers. The funds to pay those costs would have to be budgeted in each agency.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Pat Higgins, Department of Administration

SENATE BILL No. 141

By Committee on Judiciary

2-4

PROPOSED AMENDMENT

COMMENT

by Mr Hearrell

AN ACT concerning administrative procedure; concerning presiding of-
ficers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-
509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163, 65-163a, 65-525, 65-
526, 65-673, 65-780, 65-786, 65-2305, 65-3483, 65-3488, 65-3490,
66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-6207, 76-
3110, 77-505, 77-549, 77-550, 77-551, 77-551 as amended by section
41 of this act, 79-3313, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504
and K.S.A. 2002 Supp. 75-37,121, 77-514, 77-514 as amended by sec-
tion 37 of this act and 82a-1503 and repealing the existing sections;
also repealing K.S.A. 75-37,122 and 75-5611a.

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

New Section 1. There is hereby established the office of administra-
tive hearings. The office shall be administered by the director of admin-
istrative hearings. The director of administrative hearings shall be ap-
pointed by the governor pursuant to K.S.A. 75-4315a, and amendments
thereto, shall have special training and qualifications for such position.
The ~~securities commissioner~~ shall employ, and fix compensation of, such
assistants or clerks as the director of administrative hearings may from
time to time deem necessary.

director of administrative
hearings

This amendment corrects a drafting
error.

New Sec. 2. On and after July 1, ~~2008~~, ~~(a)~~ Except as otherwise pro-
vided 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 con-
ferred and imposed upon the office of administrative hearings and the
director established by this act.

2009

This bill was drafted for the 2003
Legislature. Because it carried over,
all dates have been pushed back one
year.

(b) Except as otherwise provided by this act, the office of adminis-
trative hearings and the director established by this act shall be the suc-
cessor 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

PROPOSED AMENDMENT

COMMENT

10.3

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. 3. Except as otherwise provided in this act, on July 1, ~~2008~~, _____ 2009

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. 4. On and after July 1, ~~2008~~, _____ 2009

(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. 5. On and after July 1, ~~2008~~, _____ 2009

(a) The office of administrative hearings shall have the legal custody

There is no K.S.A. 75-551. The reference was intended to be to K.S.A. 77-551, which reads as follows:

77-551. SRS hearings. On and after July 1, 1998: (a) In 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, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge assigned by the office of administrative hearings.

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

10-7

1 of all records, memoranda, writings, entries, prints, representations or
2 combinations thereof of any act, transaction, occurrence or event of the
3 office of administrative hearings within the department of administration
4 concerning adjudicative proceedings of the Kansas administrative pro-
5 cedure act and any agency or office transferred thereto under this act.

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

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

16 New Sec. 6. (a) On and after July 1, ~~2008~~, the balance of all funds
17 appropriated and reappropriated to the office of administrative hearings
18 within the department of administration concerning adjudicative pro-
19 ceedings of the Kansas administrative procedure act is hereby transferred
20 to the office of administrative hearings and shall be used only for the
21 purpose for which the appropriation was originally made.

2009

22 (b) On and after July 1, ~~2008~~, the liability for all accrued compensa-
23 tion or salaries of officers and employees who, immediately prior to such
24 date, were engaged in the performance of powers, duties or functions of
25 the office of administrative hearings within the department of adminis-
26 tration concerning adjudicative proceedings of the Kansas administrative
27 procedure act, or who become a part of the office of administrative hear-
28 ings established by this act, or the powers, duties and functions of which
29 are transferred to the office of administrative hearings provided for by
30 this act, shall be assumed and paid by the office of administrative hearings
31 established by this act.

2009

32 Sec. 7. On and after July 1, ~~2004~~, K.S.A. 2-1208a is hereby amended
33 to read as follows: 2-1208a. (a) If it shall appear to the secretary or an
34 authorized representative of the secretary from examination or analysis
35 of an official sample of a commercial fertilizer that the commercial fer-
36 tilizer is falsely labeled or fails to comply with the provisions of this act,
37 the secretary shall cause notice to be given to the person in possession of
38 the commercial fertilizer and the registrant that a hearing in relation
39 thereto will be held at a date and place named in such notice. Whereupon
40 the secretary or ~~an authorized representative of the secretary~~ a *presiding*
41 *officer from the office of administrative hearings* shall hold a hearing in
accordance with the provisions of the Kansas administrative procedure
act.

2005

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

16 Sec. 8. On and after July 1, ~~2004~~²⁰⁰⁵, K.S.A. 2-3311 is hereby amended
 17 to read as follows: 2-3311. Before any chemigation user registration or
 18 chemigation user's permit shall be revoked, denied renewal or before it
 19 shall be suspended for any cause, the secretary shall conduct a hearing in
 20 accordance with the provisions of the Kansas administrative procedure
 21 act. The notice of hearing shall be sent to the registrant or permit holder
 22 at least 15 days prior to the hearing date and shall be served upon the
 23 registrant or permit holder by letter sent to such person's address as
 24 shown by the records of the secretary, setting out the time and place of
 25 the hearing and alleged grounds for revocation or suspension. The reg-
 26 istrant or permit holder shall have the right to appear in person and by
 27 counsel and to testify and introduce evidence. If such person fails to
 28 appear, the matter may be heard in such person's absence. Any such
 29 hearing may be conducted by the secretary or ~~by a hearing officer duly~~
 30 ~~appointed by the secretary~~ *a presiding officer from the office of admin-*
 31 *istrative hearings*.

2005

32 Sec. 9. On and after July 1, ~~2007~~²⁰⁰⁸, K.S.A. 8-2426 is hereby amended
 33 to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments
 34 thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any
 35 person violating any provision thereof shall be subject to civil penalty of
 36 not less than \$350 and not to exceed \$1,000, as determined by the director
 37 of vehicles or a ~~person appointed by the director~~ *presiding officer from*
 38 *the office of administrative hearings* after notice and hearing in accord-
 39 ance with the provisions of the Kansas administrative procedure act. The
 40 provisions of this section shall not affect the authority of the secretary of
 41 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.

2008

1 Sec. 10. On and after July 1, ~~2004~~, K.S.A. 21-3110 is hereby
2 amended to read as follows: 21-3110. The following definitions shall apply
3 when the words and phrases defined are used in this code, except when
4 a particular context clearly requires a different meaning.

2005

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

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

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

10 (4) "Conviction" includes a judgment of guilt entered upon a plea of
11 guilty.

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

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

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

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

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

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

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

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

34 (10) "Law enforcement officer" means any person who by virtue of
35 such person's office or public employment is vested by law with a duty
36 to maintain public order or to make arrests for crimes, whether that duty
37 extends to all crimes or is limited to specific crimes or any officer of the
38 Kansas department of corrections or for the purposes of K.S.A. 21-3409,
39 21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amend-
40 ments thereto, any employee of the Kansas department of corrections.

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

(12) "Obtains or exerts control" over property includes but is not

1 limited to, the taking, carrying away, or the sale, conveyance, or transfer
2 of title to, interest in, or possession of property.

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

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

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

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

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

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

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

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

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

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

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

32 (e) A law enforcement officer.

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

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

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

39 (22) "State" or "this state" means the state of Kansas and all land and
40 water in respect to which the state of Kansas has either exclusive or con-
41 current jurisdiction, and the air space above such land and water. "Other
state" means any state or territory of the United States, the District of

1 Columbia and the Commonwealth of Puerto Rico.

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

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

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

12 Sec. 11. On and after July 1, ~~2006~~, K.S.A. 31-140 is hereby amended 2009
13 to read as follows: 31-140. Any person aggrieved by any order or ruling
14 issued pursuant to the provisions of this act may appeal such order or
15 ruling to the state fire marshal within 15 days from the date of the service
16 of such order by filing a notice of such appeal in the office of the state
17 fire marshal. The state fire marshal or ~~the state fire marshal's authorized~~
18 ~~representative~~ *a presiding officer from the office of administrative hear-*
19 *ings* shall hear such person within 30 days after the receipt of such notice
20 of appeal, and the hearing shall be held in accordance with the provisions
21 of the Kansas administrative procedure act. The state fire marshal shall
22 file a decision thereon and, unless by authority of the state fire marshal
23 the order is revoked or modified, the order shall be complied with within
24 the time fixed in such decision.

25 Sec. 12. On and after July 1, ~~2006~~, K.S.A. 36-509 is hereby amended 2007
26 to read as follows: 36-509. (a) Whenever a timely request for a hearing
27 shall be filed with the secretary pursuant to the provisions of this act the
28 secretary shall set a time and place for such hearing which shall be held
29 within not to exceed 20 days of the request therefor. Upon such hearing,
30 the secretary or a ~~person designated by the secretary as a hearing officer~~
31 *presiding officer from the office of administrative hearings* may issue sub-
32 poenas for the attendance of witnesses and the production of relevant
33 books and papers. At the hearing, the applicant shall have the right to be
34 represented by counsel, to present witnesses and evidence in own behalf
35 and to cross-examine adverse witnesses.

36 (b) Upon completion of the hearing, the secretary may affirm, rescind
37 or modify the order denying, suspending or revoking the applicant's li-
38 cense. Any person aggrieved by any such decision of the secretary may
39 appeal to the district court in the manner provided by the act for judicial
40 review and civil enforcement of agency actions. 2005

41 Sec. 13. On and after July 1, ~~2004~~, K.S.A. 40-2,137 is hereby
amended to read as follows: 40-2,137. (a) The costs incurred by the de-
partment of insurance in conducting any administrative hearing author-

1 ized by article 33 of chapter 40 of the Kansas Statutes Annotated and
 2 subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A.
 3 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsec-
 4 tion (a) of K.S.A. 40-1114 and K.S.A. 40-1120, and amendments thereto,
 5 shall be assessed against insurers or rating organizations that are parties
 6 to the hearing in such proportion as the commissioner of insurance may
 7 determine upon consideration of all relevant circumstances including: (1)
 8 The nature of the hearing; (2) whether the hearing was instigated by, or
 9 for the benefit of a particular party or parties; (3) whether there is a
 10 successful party on the merits of the proceeding; (4) the relative levels of
 11 participation by the parties; and (5) with the exception of hearings held
 12 under article 33 of chapter 40 of the Kansas Statutes Annotated, only
 13 when the disapproval of rates in question is upheld, a rating organization's
 14 license is suspended or revoked or a penalty is imposed as a result of the
 15 hearing.

16 (b) For purposes of this section costs incurred shall mean the ~~hearing~~
 17 *presiding* officer fees, cost of making a record and publishing notices, and
 18 travel expenses of department of insurance officers and employees, but
 19 costs incurred shall not include ~~hearing presiding~~ officer fees or cost of
 20 making a record unless the department has retained the services of ~~in-~~
 21 ~~dependent contractors~~ *the office of administrative hearings* or outside
 22 experts to perform such functions.

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

33 Sec. 14. On and after July 1, 2007, K.S.A. 44-322a is hereby amended
 34 to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under
 35 K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the
 36 secretary of human resources, the secretary or the secretary's authorized
 37 representative shall investigate the claim as provided in K.S.A. 44-322
 38 and amendments thereto to determine if a dispute exists between the
 39 parties to the claim. If the secretary or the secretary's authorized repre-
 40 sentative determines that a dispute does exist and that the parties are
 41 unable to resolve their differences, the secretary or ~~the secretary's au-~~
~~thorized representative~~ *a presiding officer from the office of administra-*
tive hearings shall establish a time and place for a hearing on the matter.

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1 The hearing shall be conducted in accordance with the provisions of the
2 Kansas administrative procedure act.

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

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

23 Sec. 15. On and after July 1, ~~2006~~, K.S.A. 44-1005 is hereby
24 amended to read as follows: 44-1005. (a) Any person claiming to be ag-
25 grieved by an alleged unlawful employment practice or by an alleged
26 unlawful discriminatory practice, and who can articulate a prima facie
27 case pursuant to a recognized legal theory of discrimination, may, per-
28 sonally or by an attorney-at-law, make, sign and file with the commission
29 a verified complaint in writing, articulating the prima facie case, which
30 shall also state the name and address of the person, employer, labor or-
31 ganization or employment agency alleged to have committed the unlawful
32 employment practice complained of or the name and address of the per-
33 son alleged to have committed the unlawful discriminatory practice com-
34 plained of, and which shall set forth the particulars thereof and contain
35 such other information as may be required by the commission.

36 (b) The commission upon its own initiative or the attorney general
37 may, in like manner, make, sign and file such complaint. Whenever the
38 attorney general has sufficient reason to believe that any person as herein
39 defined is engaged in a practice of discrimination, segregation or sepa-
40 ration in violation of this act, the attorney general may make, sign and
41 file a complaint. Any employer whose employees or some of whom, refuse
with the commission a verified complaint asking for assistance by concil-

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iation or other remedial action.

2 (c) Whenever any problem of discrimination because of race, relig-
3 ion, color, sex, disability, national origin or ancestry arises, or whenever
4 the commission has, in its own judgment, reason to believe that any per-
5 son has engaged in an unlawful employment practice or an unlawful dis-
6 criminatory practice in violation of this act, or has engaged in a pattern
7 or practice of discrimination, the commission may conduct an investiga-
8 tion without filing a complaint and shall have the same powers during
9 such investigation as provided for the investigation of complaints. The
10 person to be investigated shall be advised of the nature and scope of such
11 investigation prior to its commencement. The purpose of the investigation
12 shall be to resolve any such problems promptly. In the event such prob-
13 lems cannot be resolved within a reasonable time, the commission may
14 issue a complaint whenever the investigation has revealed a violation of
15 the Kansas act against discrimination has occurred. The information gath-
16 ered in the course of the first investigation may be used in processing the
17 complaint.

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

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

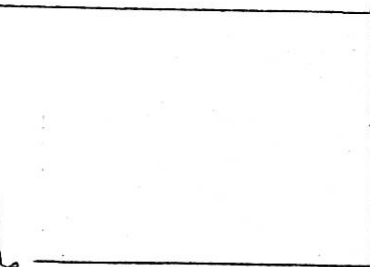
(f) In case of failure to eliminate such practices by conference and
conciliation, or in advance thereof, if in the judgment of the commissioner

1 or the commission circumstances so warrant, the commissioner or the
 2 commission shall commence a hearing in accordance with the provisions
 3 of the Kansas administrative procedure act naming as parties the com-
 4 plainant and the person, employer, labor organization, employment
 5 agency, realtor or financial institution named in such complaint, herein-
 6 after referred to as respondent. A copy of the complaint shall be served
 7 on the respondent. At least four commissioners, ~~a staff hearing examiner~~
 8 ~~or a contract hearing examiner~~ or a *presiding officer from the office of*
 9 *administrative hearings* shall be designated as the presiding officer. The
 10 place of such hearing shall be in the county where respondent is doing
 11 business and the acts complained of occurred.

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

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

23 (i) Any complaint filed pursuant to this act must be so filed within six
 24 months after the alleged act of discrimination, unless the act complained
 25 of constitutes a continuing pattern or practice of discrimination in which
 26 event it will be from the last act of discrimination. Complaints filed with
 27 the commission ~~on or after July 1, 1996,~~ may be dismissed by the com-
 28 mission on its own initiative, and shall be dismissed by the commission
 29 upon the written request of the complainant, if the commission has not
 30 issued a finding of probable cause or no probable cause or taken other
 31 administrative action dismissing the complaint within 300 days of the
 32 filing of the complaint. The commission shall mail written notice to all
 33 parties of dismissal of a complaint within five days of dismissal. ~~Com-~~
 34 ~~plaints filed with the commission before July 1, 1996, shall be dismissed~~
 35 ~~by the commission upon the written request of the complainant, if the~~
 36 ~~commission has not issued a finding of probable cause or no probable~~
 37 ~~cause or taken other administrative action dismissing the complaint within~~
 38 ~~300 days of the filing of the complaint.~~ Any such dismissal of a complaint
 39 in accordance with this section shall constitute final action by the com-
 40 mission which shall be deemed to exhaust all administrative remedies
 41 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-



—STRIKE

The distinction between complaints
 filed with the Kansas Human Rights
 Commission before and after
 July 1, 1996 is no longer relevant.

1 1010 and amendments thereto. Dismissal of a complaint in accordance
2 with this section shall not be subject to appeal or judicial review by any
3 court under the provisions of K.S.A. 44-1011 and amendments thereto.
4 The provisions of this section shall not apply to complaints alleging dis-
5 criminatory housing practices filed with the commission pursuant to
6 K.S.A. 44-1015 et seq. and amendments thereto.

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

16 (k) If the presiding officer finds a respondent has engaged in or is
17 engaging in any unlawful employment practice or unlawful discriminatory
18 practice as defined in this act, the presiding officer shall render an order
19 requiring such respondent to cease and desist from such unlawful em-
20 ployment practice or such unlawful discriminatory practice and to take
21 such affirmative action, including but not limited to the hiring, reinstate-
22 ment, or upgrading of employees, with or without back pay, and the ad-
23 mission or restoration to membership in any respondent labor organiza-
24 tions; the admission to and full and equal enjoyment of the goods,
25 services, facilities, and accommodations offered by any respondent place
26 of public accommodation denied in violation of this act, as, in the judg-
27 ment of the presiding officer, will effectuate the purposes of this act, and
28 including a requirement for report of the manner of compliance. Such
29 order may also include an award of damages for pain, suffering and hu-
30 miliation which are incidental to the act of discrimination, except that an
31 award for such pain, suffering and humiliation shall in no event exceed
32 the sum of \$2,000.

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

37 (m) If the presiding officer finds that a respondent has not engaged
38 in any such unlawful employment practice, or any such unlawful discrim-
39 inatory practice, the presiding officer shall render an order dismissing the
40 complaint as to such respondent.

41 (n) The commission shall review an initial order rendered under sub-
section (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

1 the commission may deem proper.

2 (o) The commission shall, except as otherwise provided, establish
3 rules of practice to govern, expedite and effectuate the foregoing proce-
4 dure and its own actions thereunder. The rules of practice shall be avail-
5 able, upon written request, within 30 days after the date of adoption.

6 Sec. 16. On and after July 1, ~~2007~~, K.S.A. 49-606 is hereby amended 2008
7 to read as follows: 49-606. (a) The director, with the approval of the
8 commission, may deny issuance or renewal of a license for repeated or
9 willful violation of the provisions of this act or for failure to comply with
10 any provision of a reclamation plan.

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

18 Sec. 17. On and after July 1, ~~2006~~, K.S.A. 65-163 is hereby amended 2007
19 to read as follows: 65-163. (a) (1) No person shall operate a public water
20 supply system within the state without a public water supply system per-
21 mit from the secretary. An application for a public water supply system
22 permit shall be submitted for review and approval prior to construction
23 and shall include: (A) A copy of the plans and specifications for the con-
24 struction of the public water supply system or the extension thereof; (B)
25 a description of the source from which the water supply is to be derived;
26 (C) the proposed manner of storage, purification or treatment for the
27 supply; and (D) such other data and information as required by the sec-
28 retary of health and environment. No source of water supply in substi-
29 tution for or in addition to the source described in the application or in
30 any subsequent application for which a public water supply system permit
31 is issued shall be used by a public water supply system, nor shall any
32 change be made in the manner of storage, purification or treatment of
33 the water supply without an additional public water supply system permit
34 obtained in a manner similar to that prescribed by this section from the
35 secretary.

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

(3) The secretary may adopt rules and regulations establishing a pro-
gram of annual certification by public water supply systems that have staff

1 qualified to approve the extension of distribution systems without the
2 necessity of securing an additional permit for the extension provided the
3 plans for the extension are prepared by a professional engineer as defined
4 by K.S.A. 74-7003, and amendments thereto.

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

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

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

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

37 (3) The secretary shall adopt uniform and comprehensive rules and
38 regulations for the location, design and operation of such basins. Such
39 rules and regulations shall require permit applications by the public water
40 suppliers for such basins to include a copy of the plans and specifications
41 for the location and construction of each basin, the means of conveyance
of the treatment residues to such basins, the content of treatment resi-
dues, 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

1 Kansas section of the American waterworks association, and one from
 2 three nominations submitted by the Kansas rural water association. Mem-
 3 bers of the advisory committee shall serve without compensation or re-
 4 imbursement of expenses. The advisory committee shall meet at least four
 5 times each year on call of the secretary or a majority of the members of
 6 the committee.

7 Sec. 18. On and after July 1, ~~2006~~, K.S.A. 65-163a is hereby amended 2007
 8 to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver
 9 water through pipes and mains to any premises where a condition exists
 10 which might lead to the contamination of the public water supply system
 11 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
 14 delivery of water through pipes and mains to a premise or premises where
 15 a condition exists which might lead to the contamination of the public
 16 water supply system; or (2) to cease an activity which would result in a
 17 violation of the state primary drinking water standards; or (3) to cease an
 18 activity which results in a continuing violation of the state primary drink-
 19 ing water standards; or (4) to comply with any combination of these or-
 20 ders. The supplier of water shall immediately comply with an order issued
 21 by the secretary under this section.

(c) *Orders of the secretary under this section, and hearings thereon,*
 22 *shall be subject to the provisions of the Kansas administrative procedure*
 23 *act.* Any action of the secretary pursuant to this section is subject to review
 24 in accordance with the act for judicial review and civil enforcement of
 25 agency actions. The court on review shall hear the appeal without delay.
 26

27 Sec. 19. On and after July 1, ~~2006~~, K.S.A. 65-525 is hereby amended 2007
 28 to read as follows: 65-525. (a) Records in the possession of the department
 of health and environment or its agents regarding child care facilities,
 30 maternity centers or family day care homes shall not be released publicly
 31 in a manner that would identify individuals, unless required by law.

(b) Records containing the name, address and telephone number of
 32 a child care facility, maternity center or family day care home in the
 33 possession of the department of health and environment or its agents
 34 shall not be released publicly unless required by law.

(c) Records that cannot be released by subsection (a) or (b) may be
 36 released to: (1) An agency or organization authorized to receive notice
 37 under K.S.A. 65-506, and amendments thereto; (2) a criminal justice
 38 agency; (3) any state or federal agency that provides child care services,
 39 funding for child care or child protective services; (4) any federal agency
 40 for the purposes of compliance with federal funding requirements; (5)
 41 any local fire department; (6) any child and adult care food program
 sponsoring agency; or (7) any local disaster agency.

1 (d) Any state or federal agency or any person receiving records under
 2 subsection (a) or (b) shall not disseminate the records without the consent
 3 of the person whose records will be disseminated unless required by law.
 4 Any state or federal agency or any person receiving records under sub-
 5 section (e) may disseminate the information contained in the records
 6 without the consent of the person whose records will be disseminated.

7 (e) The secretary of health and environment may release the name,
 8 address and telephone number of a maternity center, child care facility
 9 or family day care home when the secretary determines that the release
 10 of the information is necessary to protect the health, safety or welfare of
 11 the public or the patients or children enrolled in the maternity center,
 12 child care facility or family day care home.

13 (f) Any records under subsection (a) or (b) shall be available to any
 14 member of the standing committee on appropriations of the house of
 15 representatives or the standing committee on ways and means of the
 16 senate carrying out such member's or committee's official functions in
 17 accordance with K.S.A. 75-4319, and amendments thereto, in a closed or
 18 executive meeting. Except in limited conditions established by $\frac{2}{3}$ of the
 19 members of such committee, records received by the committee shall not
 20 be further disclosed. Unauthorized disclosure may subject such member
 21 to discipline or censure from the house of representatives or senate. Such
 22 records shall not identify individuals but shall include data and contract
 23 information concerning specific facilities.

24 (g) In any hearings conducted under the licensing or regulation pro-
 25 visions of K.S.A. 65-501 *et seq.* and amendments thereto, the hearing
 26 *presiding* officer may close the hearing to the public to prevent public
 27 disclosure of matters relating to persons restricted by other laws.

28 Sec. 20. On and after July 1, ~~2006~~, K.S.A. 65-526 is hereby amended
 29 to read as follows: 65-526. (a) The secretary of health and environment,
 30 in addition to any other penalty prescribed under article 5 of chapter 65
 31 of the Kansas Statutes Annotated, or acts amendatory of the provisions
 32 thereof or supplemental thereto, may assess a civil fine, after proper no-
 33 tice and an opportunity to be heard *in accordance with the Kansas ad-*
 34 *ministrative procedure act*, against a licensee or registrant for each vio-
 35 lation of such provisions or rules and regulations adopted pursuant
 36 thereto which affect significantly and adversely the health, safety or san-
 37 itation of children in a child care facility or family day care home. Each
 38 civil fine assessed under this section shall not exceed \$500. In the case of
 39 a continuing violation, every day such violation continues shall be deemed
 40 a separate violation.

41 (b) All fines assessed and collected under this section shall be remit-
 ted promptly to the state treasurer. Upon receipt thereof, the state trea-
 surer shall deposit the entire amount in the state treasury and credit it to

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the state general fund.

2 Sec. 21. On and after July 1, ~~2006~~, K.S.A. 65-673 is hereby amended
 3 to read as follows: 65-673. (a) The authority to promulgate rules and
 4 regulations for the efficient enforcement of this act is hereby vested in
 5 the secretary. The secretary is hereby authorized to make the regulations
 6 promulgated under this act conform, insofar as practicable, with those
 7 promulgated under the federal act.

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

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

34 Sec. 22. On and after July 1, ~~2004~~, K.S.A. 65-780 is hereby amended
 35 to read as follows: 65-780. The secretary may deny, suspend, revoke or
 36 modify or refuse to renew the provisions of any license or permit issued
 37 under this act if the secretary finds, after notice and hearing conducted
 38 in accordance with the provisions of the Kansas administrative procedure
 39 act that the applicant, licensee or permit holder or any agent or employee,
 40 thereof has:

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- 41 (a) Been convicted of or pleaded guilty to a violation of this act or
 any rules and regulations promulgated thereunder;
- (b) failed to comply with any provision or requirement of this act or

any rules and regulations promulgated thereunder;

(c) interfered with the secretary in the performance of any job duties regarding any inspection or the administration of the provisions of this act;

(d) denied access to premises required to be inspected under the provisions of this act;

(e) failed to pay or remit any required fee or fees, or any part thereof;

or
(f) failed to submit a required report, or submitted a false report.

Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

Sec. 23. On and after July 1, ~~2004~~ 2005, K.S.A. 65-786 is hereby amended to read as follows: 65-786. (a) If the secretary 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 rules and regulations or order issued thereunder, the secretary 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 secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder.

Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

(b) If the secretary 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 secretary 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 secretary 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 from the person subject to the order 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. *Any such hearing shall be held by the secretary or presiding officer from the office of administrative hearings.* If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by writ-

ten findings of fact and conclusions of law vacate, modify or make permanent the order.

Sec. 24. On and after July 1, ~~2006~~, 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.

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(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 flour 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

1 times, any factory, mill, warehouse, shop or establishment where flour,
2 white bread or rolls are manufactured, processed, packed, sold, or held,
3 or any vehicle being used for the transportation thereof, and to inspect
4 any such place or vehicle and any flour, white bread or rolls therein, and
5 all pertinent equipment, materials, containers and labeling.

6 (f) ~~The secretary shall prescribe by rule and regulation the procedure
7 for conducting a hearing under this section and may designate a hearing
8 officer to conduct the hearing. The hearing officer shall have the same
9 powers in conducting the hearing as the secretary. All administrative pro-
10 ceedings conducted pursuant to article 23 of chapter 65 of the Kansas
11 Statutes Annotated, and amendments thereto, shall be conducted in ac-
12 cordance with the provisions of the Kansas administrative procedures act
13 and the act for judicial review and civil enforcement of agency actions.~~

14 In conducting the hearing the secretary or the ~~hearing~~ *presiding* officer
15 may issue subpoenas to compel the attendance of witnesses, administer
16 oaths, take testimony, require the production of books, papers, records,
17 correspondence or other documents which the secretary or the ~~hearing~~
18 *presiding* officer deems relevant and render decisions. In case of the
19 refusal of any person to comply with any subpoena issued under this
20 section or to testify with respect to any matter *about* which the person
21 may be lawfully questioned, the district court of any county on application
22 of the secretary may issue an order requiring such person to comply with
23 the subpoena and to testify, and any failure to obey the order of the court
24 may be punished by the court as a contempt thereof.

25 Sec. 25. On and after July 1, ~~2006~~,²⁰⁰⁷ K.S.A. 65-3483 is hereby
26 amended to read as follows: 65-3483. (a) If, within 150 days after receipt
27 of an application, the secretary has not denied the application, the sec-
28 retary shall notify the board of county commissioners and the governing
29 bodies of all cities located within a ten-mile radius of the proposed facility.
30 The secretary also shall notify the state corporation commission and the
31 secretary of wildlife and parks of the proposed facility.

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

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

38 (1) Set a date and arrange for publication of notice of a public hearing
39 in a newspaper having major circulation in the vicinity of the proposed
40 facility. Such hearing shall be in the county in which the proposed facility
41 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

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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.

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

4 Sec. 26. On and after July 1, ~~2006,~~ K.S.A. 65-3488 is hereby
5 amended to read as follows: 65-3488. (a) Permits for PCB disposal facil-
6 ities shall be issued for fixed terms not to exceed 10 years.

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

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

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

23 Sec. 27. On and after July 1, ~~2006,~~ K.S.A. 65-3490 is hereby
24 amended to read as follows: 65-3490. (a) The secretary or the director of
25 the division of environment, if designated by the secretary, upon a finding
26 that a person has violated any provision of this act or any rule and regu-
27 lation adopted by the secretary pursuant to this act may impose a penalty
28 not to exceed \$10,000 which shall constitute an actual and substantial
29 economic deterrent to the violation for which it is assessed and, in the
30 case of a continuing violation, every day such violation continues shall be
31 deemed a separate violation.

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32 (b) No penalty shall be imposed pursuant to this section except after
33 notice of violation and opportunity for hearing upon the written order of
34 the secretary or the director of the division of environment, if designated
35 by the secretary, to the person who committed the violation. The order
36 shall state the violation, the penalty to be imposed and, in the case of an
37 order of the director of the division of environment, the right to appeal
38 to the secretary for a hearing thereon. Any person may appeal an order
39 of the director of the division of environment by making a written request
40 to the secretary for a hearing within 15 days of receipt ~~service~~ of such
41 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~~

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less than 10 days' written notice of the time and place of the hearing.
 2 Within 30 days after such hearing and receipt of briefs or oral arguments,
 3 unless such time period is waived or extended by written consent of all
 4 parties or by a showing of good cause, the secretary shall affirm, reverse
 5 or modify the order of the director and shall specify the reasons therefor.
 6 Nothing in this act shall require the observance of formal rules of evi-
 7 dence or pleading at any hearing before the secretary or director. *Hear-*
 8 *ings under this subsection shall be conducted in accordance with the Kan-*
 9 *sas administrative procedure act.*

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

14 Sec. 28. On and after July 1, 2007, K.S.A. 66-1,117 is hereby 2008
 15 amended to read as follows: 66-1,117. The corporation commission shall
 16 prescribe forms of applications for certificates, permits and licenses for
 17 the use of prospective applicants and shall make regulations for the filing
 18 thereof. The commission may designate one of its attorneys use a presid-
 19 ing officer from the office of administrative hearings as a presiding officer
 20 for any hearing that may be required concerning any application for a
 21 certificate or license and the presiding officer shall make written findings
 22 and recommendations to the commission.

23 Sec. 29. On and after July 1, 2004, K.S.A. 74-4904 is hereby 2005
 24 amended to read as follows: 74-4904. (1) The system may sue and be sued
 25 in its official name, but its trustees, officers, employees and agents shall
 26 not be personally liable for acts of the system unless such person acted
 27 with willful, wanton or fraudulent misconduct or intentionally tortious
 28 conduct. Any agreement in settlement of litigation involving the system
 29 and the investment of moneys of the fund is a public record as provided
 30 in K.S.A. 45-215 et seq. and amendments thereto and subject to the pro-
 31 visions of that act. The service of all legal process and of all notices which
 32 may be required to be in writing, whether legal proceedings or otherwise,
 33 shall be had on the executive director at such executive director's office.
 34 All actions or proceedings directly or indirectly against the system shall
 35 be brought in Shawnee county.

36 (2) Any person aggrieved by any order or decision of the board made
 37 without a hearing, may, within 30 days after notice of the order or decision
 38 of the board make written request to the board for a hearing thereon.
 39 The board shall hear such party or parties in accordance with the provi-
 40 sions of the Kansas administrative procedure act at its next regular meet-
 41 ing 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 mem-

1 ber of the board, an employee of the board or any other person designated
 2 by the board to serve as such presiding officer. Any such appointment
 3 shall apply to a particular hearing or to a set or class of hearings as spec-
 4 ified by the board in making such appointment use a presiding officer
 5 from the office of administrative hearings. The board shall review an initial
 6 order resulting from a hearing under this section. Any member of the
 7 board who serves as a presiding officer shall be reimbursed for actual and
 8 necessary expenses and shall receive compensation in an amount fixed by
 9 the board not to exceed the per diem compensation allowable for mem-
 10 bers of the board. The board is hereby authorized to enter into a contract
 11 with any other person designated by the board to serve as a presiding
 12 officer who is not a member or employee of the board the office of ad-
 13 ministrative hearings and to provide for reimbursement for actual and
 14 necessary expenses and compensation for such person serving as a pre-
 15 siding officer.

16 Sec. 30. On and after July 1, ~~2006~~, K.S.A. 74-8804 is hereby
 17 amended to read as follows: 74-8804. (a) During race meetings, the com-
 18 mission and its designated employees may observe and inspect all race-
 19 track facilities operated by licensees and all racetracks simulcasting races
 20 to racetrack facilities in Kansas, including but not limited to all machines,
 21 equipment and facilities used for parimutuel wagering.

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

26 (c) The commission may examine, or cause to be examined by any
 27 agent or representative designated by the commission, any books, papers,
 28 records or memoranda of any licensee, or of any racetrack or business
 29 involved in simulcasting races to racetrack facilities in Kansas, for the
 30 purpose of ascertaining compliance with any provision of this act or any
 31 rule and regulation adopted hereunder.

32 (d) The commission may issue subpoenas to compel access to or for
 33 the production of any books, papers, records or memoranda in the cus-
 34 tody or control of any licensee or officer, member, employee or agent of
 35 any licensee, or to compel the appearance of any licensee or officer, mem-
 36 ber, employee or agent of any licensee, or of any racetrack or business
 37 involved in simulcasting races to racetrack facilities in this state, for the
 38 purpose of ascertaining compliance with any of the provisions of this act
 39 or any rule and regulation adopted hereunder. Subpoenas issued pursuant
 40 to this subsection may be served upon individuals and corporations in the
 41 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

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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

1 affect the distribution of purses in any race shall not result in a change
2 in that distribution unless a written claim is submitted to the commission
3 within 48 hours after completion of the contested race by one of the
4 owners or trainers of a horse or greyhound which participated in such
5 race and a preponderance of evidence clearly indicates to the commission
6 that one or more of the grounds for protest, as provided for in rules and
7 regulations of the commission, has been substantiated.

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

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

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

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

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

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

31 (o) The commission may receive from commission security person-
32 nel, the Kansas bureau of investigation or other criminal justice agencies,
33 including but not limited to the federal bureau of investigation and the
34 federal internal revenue service, such criminal history record information
35 (including arrest and nonconviction data), criminal intelligence informa-
36 tion and information relating to criminal and background investigations
37 as necessary for the purpose of determining qualifications of licensees of
38 the commission, employees of the commission, applicants for employ-
39 ment by the commission, and applicants for licensure by the commission,
40 including applicants for simulcasting licenses. Upon the written request
41 of the chairperson of the commission, the commission may receive from
the district courts such information relating to juvenile proceedings as

1 necessary for the purpose of determining qualifications of employees of
 2 and applicants for employment by the commission and determining qual-
 3 ifications of licensees of and applicants for licensure by the commission.
 4 Such information, other than conviction data, shall be confidential and
 5 shall not be disclosed except to members and employees of the commis-
 6 sion as necessary to determine qualifications of such licensees, employees
 7 and applicants. Any other disclosure of such confidential information is a
 8 class A misdemeanor and shall constitute grounds for removal from office,
 9 termination of employment or denial, revocation or suspension of any
 10 license issued under this act.

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

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

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

22 Sec. 31. On and after July 1, ~~2006~~,[†] K.S.A. 74-8816 is hereby
 23 amended to read as follows: 74-8816. (a) The commission shall require
 24 occupation licenses for:

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

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

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

36 (c) A person required to be licensed pursuant to subsection (a) shall
 37 apply for such license in a manner and upon forms prescribed and fur-
 38 nished by the commission. The commission may require the applicant to
 39 submit to fingerprinting. Occupation licenses shall be issued for a period
 40 established by the commission but not less than one year or more than
 41 three years. The commission shall establish the amount of application
 fees and license fees for different types of occupation licenses, but no
 uch fee shall exceed \$200 a year. The application fee shall not be re-

1 fundable if the applicant fails to qualify for a license and shall include the
2 cost of processing fingerprints if they are required by the commission.

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

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

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

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

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

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

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

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

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

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

38 (f) The commission may suspend or revoke an occupation license for
39 any reason which would justify refusal to issue such a license and may
40 impose a fine not exceeding \$5,000 for each violation upon any occupation
41 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, ~~2006,~~²⁰⁰⁷ K.S.A. 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 race-track 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

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1 commission also may require disclosure of information about and finger-
2 printing of such employees of each applicant as the commission considers
3 necessary. Concessionaire licenses shall be issued for a period of time
4 established by the commission but not to exceed 10 years. The commis-
5 sion shall establish a schedule of application fees and license fees for
6 concessionaire licenses based upon the type and size of business. The
7 application fee shall not be refundable if the business fails to qualify for
8 a license. If the application fee is insufficient to pay the reasonable ex-
9 penses of processing the application and investigating the applicant's qual-
10 ifications for licensure, the commission shall require the applicant to pay
11 to the commission, at such times and in such form as required by the
12 commission, any additional amounts necessary to pay such expenses. No
13 license shall be issued to an applicant until the applicant has paid such
14 additional amounts in full, and such amounts shall not be refundable
15 except to the extent that they exceed the actual expenses of processing
16 the application and investigating the applicant's qualifications for
17 licensure.

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

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

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

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

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

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

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

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

12 (f) The commission may provide by rules and regulations for the tem-
14 porary suspension of a concessionaire license by summary adjudicative
15 proceedings in accordance with the Kansas administrative procedure act
16 upon finding that there is probable cause to believe that grounds exist for
17 a permanent suspension or revocation of such license. Such suspension
18 shall be for a period not exceeding 30 days. Upon expiration of such
19 suspension, the license shall be restored unless the license has been sus-
20 pended or revoked as a result of proceedings conducted pursuant to sub-
21 section (e).

22 Sec. 33. On and after July 1, ~~2006~~, K.S.A. 74-8837 is hereby
23 amended to read as follows: 74-8837. (a) No organization licensee or
24 facility manager licensee shall permit any business not owned and oper-
25 ated by the organization licensee to provide integral racing or wagering
26 equipment or services, as designated by the commission, to an organi-
27 zation licensee unless such business has been issued a racing or wagering
28 equipment or services license by the commission. Such equipment and
services include but are not limited to totalisator, photo finish, video re-
play and video reception and transmission equipment or services.

31 (b) Businesses required to be licensed pursuant to this section shall
32 apply for racing or wagering equipment or services licenses in a manner
33 and upon forms prescribed and furnished by the commission. The com-
34 mission shall require disclosure of information about the owners and of-
35 ficers of each applicant and may require such owners and officers to
36 submit to fingerprinting. The commission also may require disclosure of
37 information about and fingerprinting of such employees of each applicant
38 as the commission considers necessary. Racing or wagering equipment or
39 services licenses shall be issued for a period of time established by the
40 commission but not to exceed 10 years. The commission shall establish a
41 schedule of application fees and license fees for racing or wagering equip-
ment 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

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1 a license. If the application fee is insufficient to pay the reasonable ex-
2 penses of processing the application and investigating the applicant's qual-
3 ifications for licensure, the commission shall require the applicant to pay
4 to the commission, at such times and in such form as required by the
5 commission, any additional amounts necessary to pay such expenses. No
6 license shall be issued to an applicant until the applicant has paid such
7 additional amounts in full, and such amounts shall not be refundable
8 except to the extent that they exceed the actual expenses of processing
9 the application and investigating the applicant's qualifications for
10 licensure.

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

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

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

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

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

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

40 (5) has failed to meet any monetary or tax obligation to the federal
41 government or to any state or local government, whether or not relating
42 to the conduct or operation of a race meet held in this state or any other
43 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 pari-mutuel racing act.

Sec. 34. On and after July 1, ~~2004~~ 2005, K.S.A. 2002 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. ~~On and after July 1, 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 state agencies, boards and commissions specified in subsection (h).~~ *department of social and rehabilitation services which are not under the Kansas administrative procedure act 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 ~~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 adminis-

2005

or contract with

This amendment will give the O.A.H. flexibility to deal with unexpected circumstances.

1 administrative law judge *presiding officer* for the proceeding, but only with the
2 consent of the employing agency. The designee must possess the same
3 qualifications required of administrative law judges *presiding officers* em-
4 ployed by the office.

5 (d) The director may furnish administrative law judges *presiding of-*
6 *ficers* on a contract basis to any governmental entity to conduct any pro-
7 ceeding other than a proceeding as provided in subsection ~~(b)~~ (h).

8 (e) ~~On or before January 1, 1999,~~ The department *secretary* of ad-
9 ministration shall *may* adopt rules and regulations:

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

14 ~~(2)~~ to establish procedures for agencies to request and for the director
15 to assign administrative law judges. ~~The department of social and reha-~~
16 ~~ilitation services~~ *presiding officers*. An agency may neither select nor
17 reject any individual administrative law judge *presiding officer* for any
18 proceeding except in accordance with the Kansas administrative proce-
19 dure act;

20 ~~(3)~~ (2) to establish procedures and adopt forms, consistent with the
21 Kansas administrative procedure act, the model rules of procedure, and
22 other provisions of law, to govern administrative law judges, *presiding*
23 *officers*; and

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

26 ~~(5)~~ (3) to facilitate the performance of the responsibilities conferred
27 upon the office by the Kansas administrative procedure act.

28 (f) The director may:

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

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

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

35 (h) *The following state agencies, boards and commissions shall utilize*
36 *the office of administrative hearings for adjudicative proceedings in which*
37 *the presiding officer is not the agency head or one or more members of*
38 *the agency head:*

39 (1) ~~On and after July 1, 2004,~~ Department of social and rehabilitation
40 services, juvenile justice authority, department on aging, state board of
41 pharmacy, Kansas dental board, state board of veterinary examiners, be-
42 havioral sciences regulatory board, state board of cosmetology, Kansas
public employees retirement system, the department of agriculture, Kan-

conducting adjudicative hearings under
the Kansas Administrative Procedures Act

2005

department of health and environment

The change in (h) clarifies that the agency may issue summary and emergency orders though the hearing is conducted by the O.A.H.

Because the functions of the appeals section of the Department of Health and Environment were transferred to the O.A.H. in FY 2004, that department should be moved into this subsection.

is water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, Kansas board of barbering, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, emergency medical services council and Kansas human rights commission.

2006

(3) On and after July 1, 2006, Department of health and environment, state board of healing arts, Kansas lottery, Kansas racing and gaming commission, Kansas state banking board, consumer credit commissioner, state department of credit unions, office of the securities commissioner of Kansas, state treasurer, pooled money investment board, Kansas department of wildlife and parks, state board of technical professions and state board of tax appeals.

2007:State
STRIKE

(4) On and after July 1, 2007, Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, citizens' utility rate payor board, department of administration, department of revenue, board of adult care home administrators, board of accountancy, Kansas state grain inspection department and Kansas wheat commission.

2008

STRIKE

The Citizens Utility Rate Payor Board should be stricken because it does not conduct administrative hearings.

(5) On and after July 1, 2008, All other Kansas administrative procedure act hearings not mentioned in the above subsections.

2009

Subsections(1),(2),(3), and (4)

The change clarifies the reference to the subsections.

(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, shall be transferred to 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 person's services shall be deemed to have been continuous. 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.

STRIKE

This transfer has been completed and this subsection can be deleted.

(j) (1) Effective July 1, 2004, any presiding officer in the administrative hearings section of all agencies specified in subsection (h)(1) 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 or vested in such personnel prior to the effective date of this section. Each person's services shall be deemed to have been continuous. All trans-

2005

STRIKE

77-551

Striking the phrase "administrative hearing section of" acknowledges that not all agencies have an "administrative hearings section."

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

7 (2) ~~Effective July 1, 2006, any presiding officer in the administrative~~
 8 ~~hearings section of all agencies specified in subsection (n)(2) which con-~~
 9 ~~duct hearings pursuant to the Kansas administrative procedure act, except~~
 10 ~~those exempted pursuant to K.S.A. 75-551 and amendments thereto, and~~
 11 ~~support personnel for such presiding officers, shall be transferred to and~~
 12 ~~shall become employees of the office of administrative hearings. Such per-~~
 13 ~~sonnel shall retain all rights under the state personnel system and retire-~~
 14 ~~ment benefits under the laws of this state which had accrued to or vested~~
 15 ~~in such personnel prior to the effective date of this section. Such person's~~
 16 ~~services shall be deemed to have been continuous. All transfers of person-~~
 17 ~~nel positions in the classified service under the Kansas civil service act~~
 18 ~~shall be in accordance with civil service laws and any rules and regula-~~
 19 ~~tions adopted thereunder. This section shall not affect any matter pending~~
 20 ~~before an administrative hearing officer at the time of the effective date~~
 21 ~~of the transfer, and such matter shall proceed as though no transfer of~~
 22 ~~employment had occurred.~~

2006
 STRIKE

Same changes as subsection (j) (1) above.

77-551

23 (3) ~~Effective July 1, 2006, any presiding officer in the administrative~~
 24 ~~hearings section of all agencies specified in subsection (h)(3) which con-~~
 25 ~~duct hearings pursuant to the Kansas administrative procedure act, except~~
 26 ~~those exempted pursuant to K.S.A. 75-551 and amendments thereto, and~~
 27 ~~support personnel for such presiding officers, shall be transferred to and~~
 28 ~~shall become employees of the office of administrative hearings. Such per-~~
 29 ~~sonnel shall retain all rights under the state personnel system and retire-~~
 30 ~~ment benefits under the laws of this state which had accrued to or vested~~
 31 ~~in such personnel prior to the effective date of this section. Such person's~~
 32 ~~services shall be deemed to have been continuous. All transfers of person-~~
 33 ~~nel positions in the classified service under the Kansas civil service act~~
 34 ~~shall be in accordance with civil service laws and any rules and regula-~~
 35 ~~tions adopted thereunder. This section shall not affect any matter pending~~
 36 ~~before an administrative hearing officer at the time of the effective date~~
 37 ~~of the transfer, and such matter shall proceed as though no transfer of~~
 38 ~~employment had occurred.~~

2007
 STRIKE

Same changes as subsection (j) (1) and (2) above.

77-551

39 (4) ~~Effective July 1, 2007, any presiding officer in the administrative~~
 40 ~~hearings section of all agencies specified in subsection (h)(4) which con-~~
 41 ~~duct hearings pursuant to the Kansas administrative procedure act, except~~
 42 ~~those exempted pursuant to K.S.A. 75-551 and amendments thereto, and~~
 43 ~~support personnel for such presiding officers, shall be transferred to and~~

2008
 full-time

Same changes as subsections (j) (1), (2) and (3) above.

77-551

1 shall become employees of the office of administrative hearings. Such per-
 2 sonnel shall retain all rights under the state personnel system and retire-
 3 ment benefits under the laws of this state which had accrued to or vested
 4 in such personnel prior to the effective date of this section. Such person's
 5 services shall be deemed to have been continuous. All transfers of person-
 6 nel positions in the classified service under the Kansas civil service act
 7 shall be in accordance with civil service laws and any rules and regula-
 8 tions adopted thereunder. This section shall not affect any matter pending
 9 before an administrative hearing officer at the time of the effective date
 10 of the transfer, and such matter shall proceed as though no transfer of
 11 employment had occurred.

12 Sec. 35. On and after July 1, 2007, K.S.A. 75-6207 is hereby
 13 amended to read as follows: 75-6207. (a) If the director receives a timely
 14 written request for a hearing under K.S.A. 75-6206 and amendments
 15 thereto, the director shall request the secretary of administration to ap-
 16 point a presiding officer from the office of administrative hearings who
 17 shall hold a hearing in accordance with the provisions of the Kansas ad-
 18 ministrative procedure act to determine whether the debt claim is valid.
 19 Subject to the provisions of subsection (b), the presiding officer shall
 20 determine whether the claimed sum asserted as due and owing is correct,
 21 and if not, shall order an adjustment to the debt claim which shall be
 22 forwarded to the director and to the state agency, foreign state agency or
 23 municipality to which the debt is owed. No issue may be considered at
 24 the hearing which has been previously litigated and no collateral attack
 25 on any judgment shall be permitted at the hearing. The order of the
 26 presiding officer shall inform the debtor of the amount determined as
 27 due, if any, and that setoff procedures have been ordered to proceed in
 28 accordance with this act. If the setoff is to be made against earnings of
 29 the debtor, the order shall include a statement that the setoff may be
 30 postponed in accordance with K.S.A. 75-6208 and amendments thereto.
 31 Orders under this section shall not be subject to administrative review.

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

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

41 (d) Judicial review of an order under this section shall be in accord-
 42 ance with the provisions of the act for judicial review and civil enforce-
 43 ment of agency actions. In any such review, except as provided in sub-

2008

1 section (e), the department of administration and the secretary of
2 administration shall not be named parties to the proceedings.

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

9 Sec. 36. On and after July 1, ~~2008,~~ K.S.A. 76-3110 is hereby
10 amended to read as follows: 76-3110. (a) The KPR board may initiate a
11 proceeding to effect termination of a postsecondary institution's partici-
12 pation in federal student aid programs by serving written notice upon the
13 institution that the board has determined that the institution should not
14 be eligible for participation in such programs. The notice shall include a
15 statement of the reasons for the determination and a statement that the
16 institution may contest the finding before a ~~hearing~~ *presiding* officer upon
17 written request filed with the KPR board. The request to be heard must
18 be filed within 15 days from the date of the notice of the board's deter-
19 mination. Upon receipt of a request by an institution to be heard, the
20 KPR board shall notify the secretary of human resources that the ap-
21 pointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after
22 receipt of notification from the KPR board, the secretary of human re-
23 sources shall ~~appoint request~~ a ~~hearing~~ *presiding* officer ~~from a list, which~~
24 ~~shall be compiled and maintained by the secretary of human resources,~~
25 ~~of impartial persons who are representative of the public and who are~~
26 ~~qualified to serve as hearing officers.~~

27 (b) Any hearing requested by a postsecondary institution as provided
28 in subsection (a) shall be commenced within 15 calendar days after the
29 ~~hearing~~ *presiding* officer is ~~appointed~~ *requested* and shall be conducted
30 in accordance with the provisions of the Kansas administrative procedure
31 act. Within 30 days after close of the hearing, the ~~hearing~~ *presiding* officer
32 shall render a written opinion setting forth the ~~hearing~~ *presiding* officer's
33 findings of fact and recommendation as to the determination of the mat-
34 ter. The opinion shall be submitted to the KPR board and to the postse-
35 condary institution. If, after receipt of the ~~hearing~~ *presiding* officer's opin-
36 ion, the KPR board concludes that the board's determination that the
37 institution should not be eligible for participation in federal student aid
38 programs was warranted, the board shall notify the institution and the
39 secretary of education of the determination and the reasons therefor.

40 Sec. 37. On and after July, 1, ~~2004,~~ K.S.A. 77-505 is hereby amended
41 to read as follows: 77-505. Nothing in ~~this the Kansas administrative pro-~~
~~cedure act shall preclude informal settlement of matters that may make~~
~~unnecessary more elaborate proceedings under this act parties from set-~~

2009

2005

1 tling a matter at any time. In addition, nothing in the Kansas adminis-
2 trative procedure act shall preclude use of alternative dispute resolution,
3 with consent of the agency and all parties.

4 Sec. 38. On and after July 1, 2004, K.S.A. 2002 Supp. 77-514 is
5 hereby amended to read as follows: 77-514. (a) For agencies listed in
6 subsection (h) of K.S.A. 75-37,121, and amendments thereto, the agency
7 head, one or more members of the agency head, ~~an administrative law~~
8 ~~judge or a presiding officer~~ assigned by the office of administrative hear-
9 ings, or, unless prohibited by K.S.A. 77-551, and amendments thereto,
10 one or more other persons designated by the agency head may shall be
11 the presiding officer. For all other agencies, the agency head, one or more
12 members of the agency head, a presiding officer assigned by the office of
13 administrative hearings, or, unless prohibited by K.S.A. 77-551, and
14 amendments thereto, one or more other persons designated by the agency
15 head shall be the presiding officer.

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

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

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

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

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

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

39 (h) *Notwithstanding subsection (a) the agency head or one or more*
40 *members of the agency who will serve as a presiding officer may designate*
41 *any other person to serve as a presiding officer to determine procedural*
42 *matters that may arise prior to the hearing on the merits, including but*
43 *not limited to, conducting prehearing conferences pursuant to K.S.A. 77-*

STRIKE

This section was inserted in the bill to allow continuation of the practice of appointing a staff member, usually the agency's counsel, to issue prehearing orders. Presumably, the same counsel would then give advice when the agency head issues a final order. It is the opinion of the Committee that this arrangement conflicts with K.S.A.77-525 relating to ex parte communications and should be stricken.

516 and 77-517 and amendments thereto.

2 Sec. 39. On and after July 1, 2008, K.S.A. 2002 Supp. 77-514, as
3 amended by section 37 of this act, is hereby amended to read as follows:

4 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37,121, and~~
5 ~~amendments thereto,~~ The agency head, one or more members of the
6 agency head or a presiding officer assigned by the office of administrative
7 hearings shall be the presiding officer. ~~For all other agencies, the agency~~
8 ~~head, one or more members of the agency head, a presiding officer as-~~
9 ~~signed by the office of administrative hearings, or, unless prohibited by~~
10 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~
11 ~~ignated by the agency head shall be the presiding officer.~~

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

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

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

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

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

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

35 (h) *Notwithstanding subsection (a) the agency head or one or more*
36 *members of the agency who will serve as a presiding officer may designate*
37 *any other person to serve as a presiding officer to determine procedural*
38 *matters that may arise prior to the hearing on the merits, including but*
39 *not limited to, conducting prehearing conferences pursuant to K.S.A. 77-*
40 *516 and 77-517 and amendments thereto.*

41 Sec. 40. On and after July 1, 2007, 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

STRIKE

STRIKE

This section was inserted in the bill to allow continuation of the practice of appointing a staff member, usually the agency's counsel, to issue prehearing orders. Presumably the same counsel would then give advice when the agency head issues a final order. It is the opinion of the Committee that this arrangement conflicts with K.S.A.77-525 relating to ex parte communications and should be stricken.

1 the Kansas Statutes Annotated, and amendments thereto, shall not be
2 deemed an application for an order under the Kansas administrative pro-
3 cedure act.

4 (b) A determination by the division of taxation or the audit services
5 bureau of the department of revenue concerning tax liability under article
6 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes
7 Annotated, and amendments thereto, which is made prior to the oppor-
8 tunity for a hearing or prior to the opportunity for an informal conference
9 before the secretary or the secretary's designee on such tax liability, shall
10 not require an adjudicative proceeding under the Kansas administrative
11 procedure act.

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

16 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,
17 and amendments thereto, shall be rendered in writing and served within
18 120 days after conclusion of the hearing or after submission of proposed
19 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-
20 ments thereto, unless this period is waived or extended with the written
21 consent of all parties or for good cause shown. If extended for good cause,
22 such good cause shall be set forth in writing on or before the expiration
23 of the 120 days.

24 Sec. 41. On and after July 1, ~~2007~~, K.S.A. 77-550 is hereby amended
25 to read as follows: 77-550. For purposes of administrative proceedings of
26 the division of property valuation under the Kansas administrative pro-
27 cedure act, the secretary of revenue may designate the director of the
28 division of property valuation or ~~other designee~~ *a presiding officer from*
29 *the office of administrative hearings* as agency head.

2008

30 Sec. 42. On and after July 1, ~~2004~~, K.S.A. 77-551, is hereby amended
31 to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) *Except as pro-*
32 *vided in subsection (b), in all hearings of the department of social and*
33 *rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,*
34 *75-3306 and 75-3340, and amendments thereto, any state agency speci-*
35 *fied in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that*
36 *are required to be conducted in accordance with the provisions of the*
37 *Kansas administrative procedure act, the presiding officer shall be the*
38 *agency head, one or more members of the agency head or an adminis-*
39 *trative law judge a presiding officer assigned by the office of administra-*
40 *tive hearings.*

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41 (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

1 and 44-5,120 and amendments thereto, concerning the workers compen-
2 sation act.

3 (c) Notwithstanding subsection (a) the agency head or one or more
4 members of the agency who will serve as a presiding officer may designate
5 any other person to serve as a presiding officer to determine procedural
6 matters that may arise prior to the hearing on the merits, including but
7 not limited to conducting prehearing conferences pursuant to K.S.A. 77-
8 516 and 77-517 and amendments thereto.

9 (d) This section shall be part of and supplemental to the Kansas ad-
10 ministrative procedure act.

11 Sec. 43. On and after July 1, ~~2008~~, K.S.A. 77-551, as amended by
12 section 41 of this act, is hereby amended to read as follows: 77-551. (a)
13 Except as provided in subsection (b), in all hearings of any state agency
14 ~~specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~
15 that are required to be conducted in accordance with the provisions of
16 the Kansas administrative procedure act, the presiding officer shall be the
17 agency head, one or more members of the agency head or a presiding
18 officer assigned by the office of administrative hearings.

2009

19 (b) The provisions of this section shall not apply to the employment
20 security law, pursuant to K.S.A. 44-701 *et seq.*, and amendments thereto
21 or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532
22 and 44-5,120 and amendments thereto, concerning the workers compen-
23 sation act.

24 (c) Notwithstanding subsection (a) the agency head or one or more
25 members of the agency who will serve as a presiding officer may designate
26 any other person to serve as a presiding officer to determine procedural
27 matters that may arise prior to the hearing on the merits, including but
28 not limited to conducting prehearing conferences pursuant to K.S.A. 77-
29 516 and 77-517 and amendments thereto.

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

2007

32 Sec. 44. On and after July 1, ~~2006~~, K.S.A. 79-3313 is hereby
33 amended to read as follows: 79-3313. All cigarettes sold in this state shall
34 be in packages, and each of the packages shall bear evidence of payment
35 of the tax thereon except that any railroad or sleeping car company li-
36 censed as a retailer is hereby authorized to sell cigarettes upon its cars
37 without affixing stamps to the packages of cigarettes provided that
38 monthly reports and payment of the tax due is made directly to the di-
39 rector in the manner and under the terms provided for by the director.
40 In addition, manufacturers are hereby authorized to distribute in the
41 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 pay-

1 ment of a tax at the rates prescribed by law are made directly to the
 2 director. No wholesale dealer or manufacturers' authorized representa-
 3 tives shall sell or distribute cigarettes, except free sample packages, to
 4 any person in the state of Kansas not holding a dealer's license as provided
 5 in this act. Such packages of sample cigarettes shall bear the word "sam-
 6 ple" or "not for sale" and "state tax paid" in letters easily read.

7 Whenever the director shall have reason to believe that any manufac-
 8 turer has violated the provisions of this section or the conditions provided
 9 by the director, the director shall conduct a hearing thereon in accordance
 10 with the provisions of the Kansas administrative procedure act ~~in the~~
 11 ~~office of the director at Topeka.~~ If upon the basis of such hearing it
 12 appears to the satisfaction of the director that such manufacturer has
 13 violated any of the provisions of this section or the conditions provided
 14 by the director, the director is hereby authorized to suspend or revoke
 15 the authorization to the manufacturer for such period as the director
 16 determines is necessary but in no case for more than one year.

17 Sec. 45. On and after July 1, ~~2004,~~ K.S.A. 82a-1405 is hereby
 18 amended to read as follows: 82a-1405. (a) At the direction of the authority,
 19 the director may issue licenses for weather modification activities, as pro-
 20 vided for in this act, but any licensee shall be limited in the exercise of
 21 activities under the license to the specified method or methods of weather
 22 modification activity within the area of expertise of the licensee.

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

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

(2) the geographic area to be affected; and

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

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

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

40 ~~The director may appoint a hearing officer to conduct any hearings~~
 41 ~~required by this act.~~ The hearings shall be conducted under the provisions
 and within any limitations of rules and regulations adopted by the
 authority.

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(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. 46. On and after July 1, ~~2004~~, 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 amend-

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1 ments thereto.

2 ~~(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.~~

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9 Sec. 47. On and after July 1, ~~2004~~, 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:
16 (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;
18 (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health, safety or welfare;
20 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.

26 (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.

41 (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:

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

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

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

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

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

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

16 (7) the effectiveness of conservation plans and practices adopted and
17 implemented by the applicant and any other entities to be supplied water
18 by the applicant;

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

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

26 Sec. 48. On and after July 1, ~~2004~~, K.S.A. 2002 Supp. 82a-1503 is
27 hereby amended to read as follows: 82a-1503. (a) Any person desiring to
28 make a water transfer shall file with the chief engineer an application in
29 the form required by rules and regulations adopted by the chief engineer.

30 If the chief engineer finds the application to be insufficient to enable the
31 chief engineer to determine the source, nature and amount of the pro-
32 posed transfer, or if the application is not complete, the application shall
33 be returned for correction or completion or for any other necessary
34 information.

35 (b) The ~~hearing~~ *presiding* officer shall commence the hearing process
36 by giving notice of the prehearing conference not more than 14 days after
37 the panel ~~employs the hearing~~ *is assigned an* officer. Such notice shall be
38 given by mail to the applicant, any other parties who have intervened and
39 the appropriate commenting agencies and shall be published in the Kan-
40 sas register and in at least two newspapers having general circulation in
41 the area where the proposed point of diversion is located. The ~~hearing~~
presiding officer shall hold a prehearing conference which shall com-
42 mence not less than 90 and not more than 120 days after the required

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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 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 in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of 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. 49. On and after July 1, ~~2004~~, 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.

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(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 make available for public examination in the office of the chief engineer.

Sec. 50. On and after July 1, ~~2004~~, K.S.A. 2-1208a, 2-3311, 21-3110, 40-2,137, 65-780, 65-786, 74-4904, 75-37,122, 75-5611a, 77-505, 77-551, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504 and K.S.A. 2002 Supp. 75-37,121, 77-514 and 82a-1503 are hereby repealed.

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Sec. 51. On and after July 1, ~~2006~~, K.S.A. 36-509, 44-1005, 65-163,

2007

1 65-163a, 65-525, 65-526, 65-673, 65-2305, 65-3483, 65-3488, 65-3490,
2 74-8804, 74-8816, 74-8817, 74-8837 and 79-3313 are hereby repealed.

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3 Sec. 52. On and after July 1, ~~2007~~, K.S.A. 8-2426, 44-322a, 49-606,
4 66-1,117, 75-6207, 77-549 and 77-550 are hereby repealed.

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5 Sec. 53. On and after July 1, ~~2008~~, K.S.A. 31-140, 76-3110 and 77-
6 551 as amended by section 41 of this act and K.S.A. 2002 Supp. 77-514
7 as amended by section 37 of this act are hereby repealed.

8 Sec. 54. This act shall take effect and be in force from and after its
9 publication in the statute book.

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K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

January 26, 2004

Testimony to the Senate Judiciary Committee, 9:30 a.m., Room 123-S
Richard Cram, Director of Policy and Research

Senate Bill 141

Chairman Vratil and Members of the Committee:

Senate Bill 141 proposes to create an office of administrative hearings independent of the Department of Administration. This bill raises some concerns for the Department of Revenue.

Interpretation of Sections 3, 4 and Subsection 34(h)(4)

Section 3

The first sentence of Section 3 states:

"Except as otherwise provided in this act, on July 1, 2008, 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 [this reference should probably be K.S.A. 77-551, which refers to the presiding officer in hearings held by SRS], 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."

A stretched reading of this provision could be construed to pull in all presiding officers and support staff in administrative hearings sections, including those that do not administer hearings held pursuant to the Kansas Administrative Procedures Act (KAPA), if the agency conducts any hearings under KAPA. The Department understands that this bill is intended to apply only to personnel involved in KAPA hearings. The Department has no personnel exclusively dedicated to KAPA hearings. Are we safe to assume that no Department personnel or resources need to be transferred to the office of administrative hearings? Department officials who currently preside over KAPA administrative hearings and support staff assisting them, perform these duties along with other assigned tasks. For example, the field investigators, working for the vehicle Dealer Licensing Section of Titles & Registrations support the dealer licensing hearing process for the division. They cannot be transferred to the office of administrative hearings without eliminating the dealer licensing bureau's ability to carry on its regulatory functions, such as conducting initial inspections for new vehicle dealer license applications or inspecting existing car dealerships for compliance.

Section 4(b)

This Subsection also encompasses property and records pertaining to the powers, duties and functions transferred to the office of administrative hearings. The records used for conducting car dealer's licensing hearings are maintained on the licensing bureau's imaging system. Transferring these to the office of administrative hearings will require duplication of records and will complicate record maintenance and upkeep. In addition, the results of all hearings will need to be reported to the dealer licensing bureau so that records for the dealership being reviewed can be updated to reflect the results of the hearings. Assuming the field investigators are not transferred, they will need to be informed of hearing dates and when they must testify. The field investigators will also need to be timely informed of the results of all hearings. Confidentiality of records issues may also arise. The confidentiality laws bar the Department from disclosing certain records to persons outside the agency.

Subsection 34(h)

Subsection 34(h)(4) provides that on or after July 1, 2007, the Department must 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." Under the definitions in K.S.A. 77-502(a) and (b), it appears that the term "agency head" would include the Secretary of Revenue, and the various division directors, including the Director of Taxation, Director of Motor Vehicles, and Director of Alcohol Beverage Control. Subsection 34(h)(4) of Senate Bill 141 should mean that, so long as the presiding officer of an adjudicative proceeding is the Secretary or the appropriate division or bureau director, the adjudicative proceeding under KAPA would remain with the Department, even after July 1, 2007. If this interpretation is incorrect, we would request that the bill be amended, consistent with that interpretation.

Several officials in the Department currently conduct KAPA hearings for administrative appeals of various types of license suspensions, revocations or fines, including: the Alcohol Beverage Control Director (liquor licenses), Director of Taxation (LP gas dealer and motor vehicle fuel distributor licenses; cigarette licenses), Director of Motor Vehicles (motor vehicle dealer licenses), and Bingo Administrator (bingo licenses). KAPA hearings for drug tax assessment appeals are the responsibility of the Director of Taxation. With regard to bingo, K.S.A. 79-4707 specifically assigns the duties of hearing officer for appeals of fines, suspensions and revocation of licenses and registration certificates to the administrator of charitable gaming. This appears to conflict with the wording of subsection (h) of Section 34 of Senate Bill 141. Based on principles of statutory construction, the more specific language of the bingo statute would appear to prevail.

So long as these officials are considered to be "agency heads" and remain the presiding officers of the above types of KAPA hearings, and so long as Senate Bill 141 is not intended to move those hearings to the office of administrative hearings or transfer any personnel or resources to such office, Senate Bill 141 would have minimal impact on the Department. However, if that reading is incorrect, then this bill could have significant adverse cost impact on the Department.

If KAPA hearings are moved, this bill could increase the department's administrative costs.

If our reading of Senate Bill 141 is correct and KAPA hearings presided over by the Director of ABC, Director of Taxation, and Director of Motor Vehicles will remain in the Department, administrative costs would be fairly minimal. If the intent of this bill is to move all

of the above hearings to the office of administrative hearings and if the Department would be required, under Subsection 34(g), page 36, lines 32 through 34, to pay that office for such services, then the Department will require additional funding for those costs. For purposes of cost estimation, it is assumed that a fee schedule of \$100 per hour for hearing officer time would be used.

The Department estimates that approximately 256 hours per year are expended in preparing for and conducting administrative hearings in the bingo, drug tax and vehicle dealer licensing areas of the agency. If we assume a reimbursement level of \$100 per hour to be paid to the office of administrative hearings, the cost to the Department would be \$25,600 in FY08, based on recent past experience. The Department estimates that approximately 240 hours per year are expended in preparation for and the holding of administrative hearings that are ABC related. Assuming the same \$100 reimbursement level as above would result in a cost to the Department of an additional \$24,000 in FY08.

Drug Tax Appeals

Currently, the hearing officer and attorney handling drug tax appeals permit the taxpayer's attorney to delay resolution until after the associated criminal case is resolved. This results in over 95% of the appeals ending in settlement and only about 2 or 3 appeals going to formal hearing each year. If the new office of administrative hearings created by the bill chooses to strictly enforce subsection (b)(2) of K.S.A. 77-511 (KAPA time limits), then the number of drug tax appeals going to formal hearing could increase drastically (probably to 40 or 50 or more per year). This will take more preparation time for the department's drug tax attorney. In addition, the hearing officer time, court reporter time and overhead expense passed on by the office of administrative hearings to the Department will result in substantially increased costs.

Alcohol Beverage Control (ABC) Division

This legislation should not move any ABC hearings, since the ABC Director is the presiding officer. Should it be construed otherwise, this legislation would have a profoundly negative effect on ABC. The ABC Director is uniquely situated to have in-depth knowledge of the liquor laws and their appropriate application. His awareness of the gamut of liquor issues -- and his regular and ongoing contact with both the liquor industry and the field agents who enforce the liquor laws -- enhances his ability to understand cases and to be fair in rendering judgment. The same would generally be true with regard to other "ABC" hearings, including tobacco, bingo and drug tax hearings. Furthermore, this would complicate the administrative tasks preliminary to and in support of such hearings. Licensees who receive citations or summary orders charging them with violations frequently contact the ABC office (and particularly the Licensee Administrative Actions section) with questions about the hearing process, to request continuances, and to discuss settlement opportunities. This could create logistical difficulties if the hearings were scheduled externally.

Conclusion

If the Department correctly reads Senate Bill 141 as not requiring KAPA hearings presided over by various division or bureau directors to be moved to the office of administrative hearings, then this bill would have minimal impact on the Department. If this reading is incorrect, the Department requests that the bill be amended to clarify that the KAPA hearings currently presided over by the Director of ABC, Director of Taxation and Director of Motor Vehicles are not to be affected by this legislation, and that no Department personnel or resources are to be transferred to the office of administrative appeals.