

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Monday, February 2, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley (E)
Senator Edward Pugh (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator David Jackson
Frank S. Henderson, Jr., Executive Director, Kansas Attorney General's Crime Victims Compensation Board
Jeanette Stauffer, mother of murder victim
Jodie Dietz, President, Kansas Organization for Victim Assistance (written)

Others attending:

See Attached List.

Chairman Vratil called for bill introductions. Senator Phillip Journey requested the introduction of two bills; (1) an act concerning crimes and punishment relating to automated teller machines, and (2) crimes relating to worthless checks, amending K.S.A. 2003 Supp. 21-3707 and repealing the existing section. (Attachments 1 and 2)

Senator Donovan made a motion to introduce the bills, seconded by Senator Umbarger, and the motion carried.

SB 256 - Victim compensation for residents who are victims of crimes committed outside of the United States

Chairman Vratil opened the hearing on **SB 256**, and explained what the proposed bill was about. Senator David Jackson testified in favor of proposed legislation, and stated that the bill serves to correct an inequity in Kansas' victim compensation law. He told the Committee that Shannon Martin, a Kansas University graduate student studying abroad, was viciously murdered in Costa Rica.. Kansas statutes, as currently written, do not contemplate such a circumstance; therefore, Shannon's family was ineligible for reparation of damages under the Crime Victims Compensation Act. Senator Jackson sponsored the bill, and asked for its introduction. (Attachment 3)

Senator O'Connor requested clarification on what the bill actually included. She asked whether or not the problem was carried by the lack of a category of compensation. The Chair explained the bill would authorize a family to make application for compensation. Under the existing law families are not authorized to make application. He added that the categories of compensation are provided by statute, and the amount of compensation is decided by the Crime Victims Compensation Board.

Frank Henderson, Office of the Attorney General, testified in support of **SB 256**. He said that currently eligibility outside the U.S., its possessions and territories, is limited to those who are victimized through acts of terrorism. **SB 256** would allow Kansas residents, who are victims of violent crimes, to apply for compensation to ease a portion of the financial loss the families experience. Mr. Henderson stated the fiscal impact of the requested change would be minimal. (Attachment 4)

Mr. Henderson distributed copies of a letter from Jodie Dietz, President, Kansas Organization for Victim Assistance in support of **SB 256**. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Monday, February 2, 2004, in Room 123-S of the Capitol.

Jeanette Stauffer, mother of murder victim, Shannon Martin, testified in support of **SB 256**. She related the events of her daughter's murder in Costa Rica, and the problems endured with the red tape, and the expenses she and her husband incurred trying to get their daughter's body released by the Costa Rican government and returned to the U.S. Mrs. Stauffer related that trying to track the progress or lack of progress for a two and a half year investigation was an expensive endeavor for the family.

Mrs. Stauffer said that the FBI stated that it was satisfied with the investigation, but a year and a half later she realized that she had been misled by the FBI. She said she discovered she could not count on the FBI, and if they had have been truthful with her, the case could have been solved within six months of the murder. Mrs. Stauffer related how the investigation was mishandled in Costa Rica, plus all the expenses, time, required travel and the frustration and mental anguish incurred. She could not get any support or assistance from the FBI in the investigative process or court proceedings. She stated that the KBI's response was profoundly different and came from KBI Director Larry Welch and KBI SAC Larry Thomas.

Mrs. Stauffer expressed her disappointment in the University of Kansas not relaying information they had regarding the underlying dangers in Golfito before the KU study abroad program was developed in 1992. She stated that universities have a duty to learn about a community before students are sent to the area, and they also have a duty to warn its students about the underlying dangers within the community. She said she was working with Dr. Gary Rhodes, University of Southern California, Safety Abroad First - Education Travel Information (SAFETI), to draft a federal proposal, since currently there is no federal mandate for study abroad programs, only guidelines that may be followed by universities. She urged the Committee to pass **SB 256** amending the Crime Victims Compensation Board Act to include a citizen of Kansas who is victimized outside of the United States. (Attachment 6)

Having no Committee questions, the Chairman closed the hearing on **SB 256**.

Final Action:

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

Chairman Vratil called for discussion and final action on **SB 141**. Senator Umbarger offered an amendment and explained it related to concerns of the Kansas Department of Agriculture (KDA). He said that the language on page 36, new Section (d), would be amended on line 4, as it relates to the cost of the agency in going through the administrative hearing process. He explained the concerns about the Office of Administrative Hearings' (OAH) expertise to represent KDA in many of the matters that are somewhat unique to that department, and KDA having the flexibility to represent itself or schedule hearings relating to rural environment issues and the availability of participants. Senator Umbarger stated that KDA felt the amending language would not mandate KDA to go to the Office of Administrative Hearings, but would be an option KDA could consider. (Attachment 7)

Chairman Vratil explained that during his conversations last week with representatives from KDA, KDA suggested a claimant be allowed to elect to have a hearing conducted by a hearing officer designated by the KDA or a hearing conducted by a hearing officer from OAH. He said he told KDA this type of amendment would not be inconsistent with the purpose of the bill because the claimant would then have the choice whether the hearing officer would come from KDA or OAH. The Chair clarified that one of the main purposes of **SB 141** was to eliminate the appearance of impropriety or influence which occurs when hearing officers come from within an agency.

Senator Umbarger drew the Committee's attention to the last sentence of the proposed language which stated, "Costs for the hearing shall be paid by the non-prevailing party". He questioned whether it should be included since the Committee had previously held discussions on that subject. Chairman Vratil stated that would be new law, and would be inconsistent with the rest of **SB 141**. He said that would be a major change in law as there are no provisions in **SB 141** to provide attorney's fees to the prevailing party.

Following Committee questions and discussion, Chairman Vratil explained what the amendment actually did. Senator Umbarger clarified that the bill with the proposed amendment would give a claimant three options for a hearing, i.e. (1) the agency head would hold the hearing, (2) a subordinate of the agency head

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Monday, February 2, 2004, in Room 123-S of the Capitol.

would be appointed to hold the hearing, or (3) a hearing officer from the Office of Administrative Hearings would conduct the hearing.

Senator Umbarger made a motion to amend SB 141 with his submitted language on page 36 of the new Section (d), but striking the last sentence of the amendment. The motion was seconded by Senator Oleen, and the motion carried.

Senator Donovan proposed an amendment requested by the Department of Revenue to page 37, Section 34, line 21 to add the following language, "except that any Kansas Administrative Procedure Act hearing in which the presiding officer is Director of Taxation, the Director of Motor Vehicles, or the Director of Alcohol Beverage Control, shall remain at the Department of Revenue and shall not be transferred to the Office of Administrative Hearings". He referenced last year's Legislative Post Audit Report relating to automobile dealers involving tax collection and remission to the State. He said there were a number of used automobile dealers around the state who had been collecting the tax but not remitting all of it or not doing so in a timely manner. He stated that when working with automobile dealers and non-payment of taxes, the Secretary of Revenue should be able to designate the Director of Motor Vehicles or someone in that office because of the possibility of the dealer losing his license. He said also in dealing with the large number of cases relating to Alcohol and Beverage Control, it made better sense to have those hearings within the Alcohol and Beverage Control. (Attachment 8)

Senator Donovan made a motion to amend SB 141 with his submitted language, and seconded by Senator Umbarger. Following brief discussion and clarification, the Chairman called for the vote, and the motion failed.

Chairman Vratil referred the Committee to the balloon amendment proposed by the Kansas Judicial Council which contained numerous technical corrections. The Chair stated that most of the corrections change the calendar year by adding one year because the bill was drafted a year ago. The balloon also contains some corrections for drafting errors, as well as a correction to the erroneous statutory reference identified earlier by Senator O'Connor on page 3, line 15. The Chairman said the correct statutory reference should be K.S.A. 77-551 and not 75-551. (Attachment 9)

Chairman Vratil called the Committee's attention to a letter from Randy Hearrell which under Item No. 1 referred to an attached a letter from Kansas Public Employees Retirement System (KPERs) which suggested a change that would have KPERs' Executive Director be authorized to hear administrative hearings. Mr. Hearrell stated in his letter that this change would not be consistent with the philosophy of the act because KPERs' Executive Director is not the agency head; the Board is the agency head. The Committee took no action on Item No. 1 of Mr. Hearrell's letter. (Attachment 10)

Under Item No. 2 of Mr. Hearrell's letter he suggest that in order to be consistent with the philosophy of the act, "director of vehicles or a" should be stricken on page 5, lines 36 and 37. Senator Oleen made a motion to adopt that amendment, seconded by Senator Umbarger.

Senator Donovan expressed his concern of taking specific jobs, i.e. dealer plates and full privilege license plates and having a department handle administrative hearings covering these specific issues they do not deal with on a daily basis. Senator Oleen stated that the same case could be made for a number of agencies, but what we are looking for is a fair and independent review. She referred to page 14 of the Legislative Post Audit Report showing that eight state agencies already contract with OAH to handle administrative hearings. Senator Oleen stated other states save money using this method. Additionally they save time as well as provide faster response in handling hearings.

Following discussion, Chairman Vratil called for a vote by a show of hands on the motion to amend in regard to Item 2 of Mr. Hearrell's letter. The motion to amend carried 3 to 2.

Senator Oleen suggested that final action on **SB 141** be delayed until a later meeting as she would like to visit with Committee members and staff as to the confusion that exists about different agencies having a choice in how administrative hearings are handled. Chairman Vratil agreed. He announced that final

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Monday, February 2, 2004, in Room 123-S of the Capitol.

action on **SB 141** would be delayed until a later meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 3, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon., Feb. 2, 2004

NAME	REPRESENTING
MARY FEIGHNY	Attuy General
Mark Braun	DofA - OAH
Camille John	AHJ Gen'l
CHRIS COLLINS	KMS
Reyn M. Maxwell	Judicial Council
Michael White	KCDAA
Judy Nottingham	CVCB
Barbara D. Taylor	CVCB
Joanna P. Hawkins	Sen. David Haley's office
SCOTT SCHNEIDER	GBBA
Eric Collins	Ks Govt Consulting
John Cassidy	KDOT
JOE McFARLAND	SILVER HAired LEGIS
JIM SNYDER	"
Kyle Smith	KBI
Sandy Barnett	KCSOV
L. Murphy	Helm Law Firm
Scott Heider	KS Self Insurers Assoc.
L. Du. [Signature]	AppleJacks Bonding Lawrence KS P.O. Box 326

SENATE JUDICIARY COMMITTEE GUEST LIST

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DATE: Mon, Feb. 2, 2004

NAME	REPRESENTING
Anne Bos	KS Corporation Comm'n.
Julia Butler	KSC
Patricia Biggs	KSC
Brenda Harmon	KSC
Jan Snyder	Silver David Legis
DAN RILEY	KDA
Doug Smith	Pregor, Switz & Associates
DAVID OWEN	Homeless Come Home

SENATE BILL NO. _____

By

AN ACT concerning crimes and punishment; relating to automated teller machines.

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

Section 1. (a) Automated teller machine robbery is the taking of property from the person or presence of another by force or threat of bodily harm to any person to effect a transaction at an automated teller machine.

Automated teller machine robbery is a severity level 4, person felony.

(b) for the purpose of this section, "automated teller machine" means any electronic information processing device located in this state which accepts or dispenses cash in connection with a depositor's account or accounts.

Sec. 2. (a) Aggravated automated teller machine robbery is an automated teller machine robbery, as defined by section 1, and amendments thereto, committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery.

Aggravated automated teller machine robbery is a severity level 2, person felony.

(b) for purposes of this section, "automated teller machine" shall have the same meaning as subsection (b) of section 1, and amendments thereto.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. _____

By

AN ACT concerning crimes and punishment; relating to worthless checks; amending K.S.A. 2003 Supp. 21-3707 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 21-3707 is hereby amended to read as follows: 21-3707. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee: (1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding \$30 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order; or (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(c) In addition to all other costs and fees allowed by law,

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each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed \$10 for each check. If the issuer of the check is convicted in district court, the administrative handling costs may be assessed as part of the court costs in the matter. The moneys collected pursuant to this subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.

(d) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated, unless such check, draft or order was presented for payment prior to the postdated date; or

(2) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(e) (1) (A) Giving a worthless check is a severity level 7, nonperson felony if the check, draft or order is drawn for \$25,000 or more.

(B) Giving multiple worthless checks in a seven-day period is a severity level 7, nonperson felony if the combined total of the checks, drafts or orders is \$25,000 or more.

(2) (A) Giving a worthless check is a severity level 9, nonperson felony if the check, draft or order is drawn for at least \$500 but less than \$25,000.

(B) Giving multiple worthless checks in a seven-day period is a severity level 9, nonperson felony if the combined total of

the checks, drafts or orders is at least \$500 but less than \$25,000.

(3) Giving a worthless check is a class A nonperson misdemeanor if the check, draft or order is drawn for less than \$500.

(4) Giving a worthless check, draft or order drawn for less than \$500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times.

Sec. 2. K.S.A. 2003 Supp. 21-3707 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



- WAYS AND MEANS
- ELECTIONS AND LOCAL GOVERNMENT
- TRANSPORTATION
- JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
- TOPEKA STATE HOSPITAL CEMETERY
- MEMORIAL ADVISORY COMMITTEE
- JOINT COMMITTEE ON CHILDREN'S ISSUES
- SPECIAL COMMITTEE ON KANSAS SECURITY

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SENATE CHAMBER

Testimony on Senate Bill 256
 Before the Senate Judiciary Committee
 John Vratil, Chairman

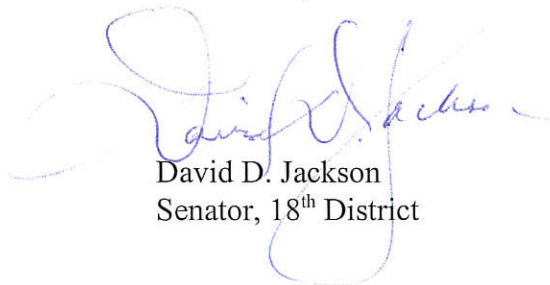
This bill serves to correct an inequity that currently exists in our victim compensation law.

Shannon Martin, a Kansas University student studying abroad, was viciously murdered but because our statutes as currently written do not contemplate such a circumstance, Shannon's family is ineligible for reparation of damages under the Crime Victims Compensation Act.

Although it is too late to assist Shannon's family, this bill will help others should this disastrous occurrence ever befall another Kansas family.

Mr. Chairman, others are here who will be able to answer any questions better than I; therefore, I will yield the floor to these experts.

Thank You,



David D. Jackson
 Senator, 18th District



PHILL KLINE
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CRIME VICTIMS COMPENSATION BOARD

120 S.W. 10th Avenue, 2nd Floor

Topeka, Kansas 66612-1597

PHONE: (785) 296-2359 FAX: (785) 296-0652

GLENDAL. CAFER, CHAIR
LOUIS JOHNSON
PAULA S. SALAZAR

**Statement of Frank S. Henderson, Jr.
Executive Director, Crime Victims Compensation Board
Before Senate Judiciary Committee
Re: Senate Bill 256**

February 2, 2004

Chairman Vratil and Members of the Committee:

I am Frank Henderson, Jr, Executive Director of the Crime Victims Compensation Board, a division of the office of Attorney General Phill Kline. The Crime Victims Compensation Board was established by the 1978 Legislature, as a payer of last resort, to assist victims of violent crime with out of pocket losses.

I sincerely thank you for the opportunity to address the committee today and express my support of Senate Bill 256. This bill was requested by Attorney General Kline and Senator Jackson to expand eligibility under the Crime Victims Compensation Act, to Kansas residents who are victims of violent crime outside of the United States.

Ms. Shannon Martin, a University of Kansas student, tragically lost her life as she was studying abroad in Costa Rica. Her family incurred many expenses as a result of this criminal incident. However, under current law, eligibility outside the United States, its possessions and territories, is limited to those who are victimized through acts of terrorism. Senate Bill 256 allows Kansas residents who are victims of other violent crimes to apply for compensation to ease a portion of the financial loss they have experienced.

The fiscal impact of this change will be minimal. Fortunately, there are not a large number of our residents who are victimized outside of the United States. Additionally, some countries have a compensation program for crime victims. However, it is extremely meaningful and beneficial to those unfortunate individuals and families.

This bill presents an excellent opportunity to enhance the eligibility provisions of the Crime Victims Compensation Board Act without having to ask for additional funding. I do ask for your support of Senate Bill 256 to enable us to assist Kansans who are victimized abroad. Thank you for your consideration.

Senate Judiciary

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Attachment 4

**Kansas Organization for Victim Assistance
P.O. Box 2865
Topeka, Kansas 66601**

*Jodie Dietz,
President
Johnson County Provider Monitor*

*Corinne Radke,
Vice President
Wichita Chapter of Parents of
Murdered Children*

*Karen Smart,
Treasurer
MADD*

*Debi Holcomb,
Secretary
Kansas Department of Corrections*

January 30, 2004

Dear Senator John Vratil:

I am writing in my capacity as President of the Kansas Organization for Victim Assistance (KOVA) to express our support of the provisions of **Senate Bill 256** which authorizes compensation for residents involved in violent crimes committed outside of the United States.

KOVA is a non-profit organization whose mission is to promote fair treatment for victims of crime. Established in 1995, the membership of KOVA includes both crime victims and victim service provider agencies from across Kansas. KOVA works to assist in the exchange of information and ideas relevant to the field of victims of crime; further victim advocacy through a commitment to addressing the needs of crime victims and providing support to victim service providers; encourage the sharing and utilization of resources; and, provide for cooperation and concerted action on policies and programs which affect victims of crime and KOVA members.

We encourage your favorable consideration of **Senate Bill 256**.

Sincerely,



Jodie Dietz, President
Kansas Organization for Victim
Assistance

Senate Judiciary

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Attachment 5

Senate Judiciary Committee
Senate Bill 256
Statement by
Jeanette C. Stauffer
Mother of Shannon Lucile Martin
February 2, 2004

I appreciate having the opportunity to present my testimony in support of Senate Bill 256 to you this morning.

Introduction

At 6:30 a.m. on Mother's Days, May 13, 2001, I received the call that is a parent's worst nightmare. I was awakened by a call from Mark Cullilane from the U.S. Embassy in Costa Rica.

He said, "Are you Jeanette Stauffer?" I said, "Yes." "Are you the mother of Shannon Lucile Martin?" I said, "Yes." (My heart sank.) He said, "I have very bad news; your daughter has been murdered."

Shannon was walking home, less than 100 feet from where she lived, when she was attacked by three assailants. She screamed and fought while the killers brutally stabbed her 14 times. She knew she was being killed.

Shannon had been sent back to Golfito by her honor's professor at KU. She needed to collect more ferns to verify her honor's research thesis before it could be published. She was only to be in Golfito for a week and was to be graduated with honors from KU on May 20. Shannon had been a KU study abroad student in the spring/summer 2000.

The day after my daughter was killed, my husband had to send \$5,200 in cash through Western Union just to begin the process of returning Shannon's body to the states. Even that was no easy task; it took over three and a half hours to finish the required paperwork in order to wire the money.

Not only were we dealing with the gut-wrenching pain of losing a daughter, we had to rely on people in Costa Rica to choose the casket, prepare her for burial, and return her body in time for the planned funeral.

Investigation

My husband and I were overwhelmed by all of the red tape we had to endure, and the expenses we incurred to get my daughter's body released by the Costa Rican government and returned to the states.

I was on my own to sort out the conflicting and incomplete information regarding the murder and investigation that was taking place in another country with a different language, culture, and legal system. Throughout the investigation, It was not easy to locate people who could provide me with accurate information.

There were daily phone calls to the C.R. Embassy in Washington, D.C., to the U.S. Embassy in Costa Rica, to our Congressmen, and to agencies regarding the murder and about the ensuing investigation. There were faxes and emails to be sent to verify information. And, there were numerous documents that had to be translated into English.

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Attachment 6

I do not want other families to have to go through the mental, emotional, and physical exhaustion that our family dealt with for two and a half years. I had to hire interpreters to communicate with Costa Rican officials, and I had to hire translators to be able to read the documents. Trying to find out about the progress or lack of progress of the investigation for two and a half years was a very expensive endeavor for our family.

The Consular Section of the U.S. Embassy in Costa Rica was very helpful and supportive. But, the policy of the state department does not allow the Embassy to provide advice or tell a victim's family what needs to be done, except about returning a victim's body to the states.

Immediately after the murder, the Minister of Public Security in Costa Rica invited the FBI to assist with the investigation. The FBI agreed to provide lab assistance and interview two KU study abroad students in the states, but did not plan to travel to Golfito to assist with the investigation.

I believed I could count on the FBI to keep our family informed about the investigation. Since FBI SAC Agent Ortiz stated he was satisfied with the investigation, I thought the FBI was privy to evidence that would help to solve the crime, and the evidence could not be made public.

The FBI continued to tell me for over two years that the investigation was thoroughly and professionally handled. The FBI continued to espouse that it was satisfied with the investigation. But, with all of the conflicting information I was receiving, I continued to question the FBI.

One and a half year after the murder, my worst fears were confirmed. I had been misled and misinformed by the FBI. I could not count on the federal investigative agency in my own country. They let my daughter down, and caused me a lot of anguish, disappointment, and it cost our family a lot of time and money trying to sort out the truth.

If the FBI would have been truthful with me, the investigation could possibly have been solved within six months after the murder. There was absolutely no reason the FBI should have told me that the agency was satisfied with the investigation from the beginning or at any time during the investigation. I questioned the investigation of the prosecutor and investigator in charge. If I had been told the truth by the FBI, I would have hired a Costa Rican attorney and saved a lot of emotional and mental frustration and also money.

I will provide a few examples about how the crime scene was examined: People were walking all around Shannon's body before and after the police had arrived. The prosecutor would not wait until morning to lift the body. No gloves were worn when handling the evidence. There were bottles and other potential evidence that was left at the crime scene. No clippings were taken from under Shannon's fingernails or toenails; although, she forcefully fought to the bitter end, trying to survive the attack.

In March 2003, I again discovered conflicting information. If I would not have intervened in the investigation, the killers of my daughter would have walked. I learned that Kattia, the accused female, planned to change her testimony, and there would be no evidence against the two accused males. I also learned that Kattia's attorney was corrupt and was a close friend of the prosecutor.

It was time for me to return to Costa Rica to question the lack of progress with the investigation. When I arrived, I stayed up most of the night sorting through information and documents about

the investigation. I was developing questions to ask the prosecutor and the investigator in charge of the case. I was sitting at the computer at the hotel, keying in questions, when I saw an ambulance drive up. I walked out to the ambulance to have my blood pressure taken; it was 181 over 110. My blood pressure normally is in the range of 120 over 70. I was having an anxiety attack.

Expenses

There were so many expenses throughout the investigation and trial. All the letters and emails had to be translated before being sent to the OIJ, prosecutor, investigators, CR president, and CR Minister of Public Security. And, their letters and emails had to be translated from Spanish to English.

I had to hire interpreters to call Costa Rica, to meet with Costa Rican officials, and to attend court hearings and the trial. The trial was recessed four times. Some of the recesses were as long as ten days. I had to send Larry Thomas, Jesse Ybarra, and my husband to the states and, then, they returned for the continuation of the trial. Airline prices and flight changes were nonnegotiable.

I had to find a hotel in Golfito for Larry Thomas, KBI SAC; Jesse Ybarra, Interpreter/Assistant Investigator; Juan Carlos Arce, attorney; Peter Majerle, interpreter; Edgar Aguilar, van driver; and for my husband and me. The hotel had to have a location for Thomas and Ybarra to bring informants to be interviewed and for all of us to meet with my CR attorney and CR officials.

Expenses included rental cars, drivers, gasoline, meals, phone calls, computer and internet access, and airport exit taxes. I also paid the hotel and meal expenses for the Costa Rican security officers. The total expense we incurred during the two and a half years was \$101,028.

In May 2001, immediately after my daughter was murdered, Director Larry Welch offered the services of the KBI, and KBI SAC Larry Thomas stepped forward to offer his assistance as an investigator. Since FBI Agent Ortiz stated that he was satisfied with the progress of the investigation, I did not think it was necessary for Agent Thomas to assist with the investigation. One of the biggest mistakes I made during the investigation.

In April 2003, a law student interning at the courthouse in Golfito told me that I could become a querellante, an actual party to the process. He also said that the prosecutor told him that I was an American; he did not have to tell me my rights, and he was not going to waste his time.

I traveled to Costa Rica to give power of attorney to a Costa Rican attorney. He motioned the court for me to become a party to the process.

In May 2003, an American attorney and I traveled to Golfito from the states to testify that I was not told my rights according to Costa Rican law and was not kept informed. The Court ruled in my favor and against the prosecutor.

I once again tried to persuade the FBI to assist with the investigation. I now had a legal right to invite the FBI. I convinced the prosecutor to sign the Court's order and to add a statement that my CR attorney and I were inviting the FBI to assist with the investigation. I faxed the information to the FBI and also to the KBI. I should not have been surprised; the FBI gave all kinds of excuses as to why it could not provide assistance. I received a different response from KBI Director Larry Welch and KBI SAC Larry Thomas, who again stepped forward to help our family.

By the time I returned to the states, Agent Thomas was ready to conduct a private investigation. He planned to review the prosecutor's case file and information I had accumulated about the investigation. However, he needed an interpreter/translator. Court Spanish-interpreter, Jesse Ybarra, was highly recommended.

Interpreter Ybarra began the tedious task of translating the whole 960-page case file. He dedicated the entire week pouring through the file during the evenings and meeting with Agent Thomas during the days to interpret the Spanish documents. Agent Thomas and Ybarra discovered evidence that had been gathered but never tested and people who had information about the murder but had never been questioned. He also found conflicting and incomplete reports. It was time for them to travel to Costa Rica.

In June 2003 Thomas and Ybarra spent long hours for ten days searching for evidence and interviewing people who had information about the murder in Golfito, Costa Rica. The Kansas investigation team discovered a taxi cab, knife, and pants with human blood that should have been examined by the OIJ crime lab but never were tested. Hair samples were not taken from all of the suspects to be compared to the five unmatched hair samples found in Shannon's hand. Thomas and Ybarra talked with over 30 people who should have been interviewed in the beginning. Agent Thomas asked my CR attorney to motion the Court to have the taxi cab, knife, and pants tested.

After returning to Topeka, Ybarra spent countless hours translating documents and maintaining communications with contacts in Costa Rica. Agent Thomas reviewed the autopsy photos and video and examine more documents and information about the case. Thomas and Ybarra continued to meet at the KBI office to discuss their strategies for continuing the investigation.

Then, it was time to return to Golfito for another ten days to resume their investigation. During the two trips, they interviewed more people and collected more evidence than had been gathered by the prosecutor on the case and Costa Rican investigators during the previous two and a half years.

It was solely the work of the private investigation team, Special Agent in Charge, Larry Thomas; and his assistant investigator, Jesse Ybarra; who gathered the testimony from a witness and other information and evidence that sealed the fate of Caballo. He was convicted and sentenced to 15 years.

I would like to add that the FBI refused my FOIPA request, the KBI's request, and my CR attorney's request to send the FBI case file on Shannon Martin to the KBI or my C.R. attorney. The FBI had questioned students who were with Shannon the night she was killed and had received information that Agent Thomas and Ybarra needed to review.

I also learned early on that I could depend on the Crime Victims Compensation Board, Office of the Kansas Attorney General. Frank Henderson, Jr., Executive Director of the Board, called the FBI's victims assistance office in Kansas City to make sure the FBI was assisting our family after the murder of my daughter. When Mr. Henderson discovered that the FBI never called our family, he continued to call the FBI in Kansas City to request assistance for our family.

Frank Henderson called the regional office many times before I finally received a call from a lady named Bridgett at the FBI office in Kansas City in August 2001—three months after the murder. Bridget told me there were no funds in the regional office to help our family. I asked if

she could check again. Bridgett stated she would check and would call me back. I never received the promised call.

Conclusion

Shannon loved Golfito and respected its people. She was so excited to return to see her host family, which she adored and to see her Costa Rican friends. She was naïve, as I was naïve when I visited Shannon in June 2000. Golfito looked like a paradise, and the people we knew were friendly and helpful.

After the brutal stabbing death of my daughter, I learned from the University of Costa Rica that the University of Kansas had been warned about the underlying dangers in Golfito before the KU study abroad program was developed in 1992.

The U.S. Embassy in Costa Rica had also warned the University of Kansas. But, university officials did not travel to Golfito to learn about the community. Officials would have learned about the prevalence of drugs, crime, and other safety issues in Golfito. Officials of the University of Kansas should have had a duty to warn its students about the underlying dangerous within the community.

As a parent I relied on the University of Kansas to inform my daughter about the community of Golfito. State universities should have the duty to learn about a community before students are sent to the area. Universities should also be required to develop safety guidelines and should have to warn students about any dangers in the community.

I am working with Dr. Gary Rhodes, University of Southern California, SAFETI, to draft a federal proposal. There is currently no federal mandate for study abroad programs, only guidelines that may be followed by universities. SAFETI is Safety Abroad First – Education Travel Information.

My daughter, Sheri, is in China studying the Chinese language from January through May. If it were not for the SAFETI web site, I would not have been able to properly inform Sheri regarding issues that should have been addressed by her sending university. I know no one can guarantee her safety while studying abroad. However, without being informed about pending dangers and having safety guidelines in place, she would not know how to handle certain dangers.

I learned within an hour after my daughter had been killed that Golfito was a major drug port in Costa Rica since the late 1980s. I also learned that the University of Kansas never had a written contract with the Institute of Tropical Studies in Golfito, Costa Rica.

State universities should be required to establish a fund to be available for a student or his/her family if a student sent by the university is victimized while in another country. I had asked the University of Kansas to help our family with the reward fund; the university officials stated that the university could not use state funds to help with the reward fund.

The Kansas Legislature led the country with the Sexual Predators Law. The Kansas Legislature can once again be a leader in writing legislation to hold our state universities accountable for the safety of study abroad students.

I hope you will support Senate Bill 256 amending the Crime Victims Compensation Board Act to include a citizen of Kansas who is victimized outside of the United States.

I appreciate your interest in helping citizens of the state who have been victimized in another country by supporting Senate Bill 256.

Thank you for allowing me the opportunity to speak before your committee.

If there is any other information I can provide, you may email me at jaycstauffer@cox.net or call me at 785-246-1527 or 785-845-4696.

Respectfully submitted,

Jeanette C. Stauffer
Mother of Shannon Lucile Martin

Abbreviations:

OIJ – Organization of Judicial Investigation

CR – Costa Rica

SAC – Special Agent in Charge

FOIPA – Freedom of Information Privacy Act

SAFETI – Study Abroad First – Education Travel Information

(f) The director may:

- (1) Maintain a staff of reporters and other personnel; and
- (2) implement the provisions of this section and rules and regulations adopted under its authority.

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

(h) Effective July 1, 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.

History: L. 1997, ch. 182, § 88; L. 2000, ch. 132, § 1; July 1.

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Any party or entity may request that any matter for which a KAPA hearing has been scheduled or any matter for which a right to a KAPA hearing exists, may have the matter heard by a hearing officer from the office of administrative hearings.

~~COSTS FOR THE HEARING SHALL BE PAID BY THE NON-PREVAILING PARTY.~~

Senate Judiciary
2-2-04
 Attachment 7

SB 141

Amendment to Section 34 (h) (4)

p. 37, line 21, add the following language:

except that any Kansas administrative procedure act hearings in which the presiding officer is director of taxation, the director of motor vehicles, or the director of alcohol beverage control, shall remain at the department of revenue and shall not be transferred to the office of administrative hearings

Motion failed

SENATE BILL No. 141

By Committee on Judiciary

2-4

Balloon Amendment KJC

PROPOSED AMENDMENT

COMMENT

Senate Judiciary 2-2-04 Attachment 9

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, ~~2006~~, (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 f 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

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PROPOSED AMENDMENT

COMMENT

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1 authority of the office of administrative hearings within the department
2 of administration and the secretary of administration concerning adjudi-
3 cative proceedings of the Kansas administrative procedure act to acquire,
4 hold or dispose of real property or any interest therein, the office of
5 administrative hearings and the director as established by this act shall
6 succeed to such power or authority.

7 (h) The office of administrative hearings and the director established
8 by this act shall be continuations of the office of administrative hearings
9 within the department of administration and the secretary of administra-
10 tion concerning adjudicative proceedings of the Kansas administrative
11 procedure act.

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

13 any presiding officer in the administrative hearings section of all agencies
14 which conduct hearings pursuant to the Kansas administrative procedure
15 act, except those exempted pursuant to K.S.A. ~~75-551~~, and amendments _____ 77-551
16 thereto, and support personnel for such presiding officers, shall be trans-
17 ferred to and shall become employees of the office of administrative hear-
18 ings established under this act. Such personnel shall retain all rights under
19 the state personnel system and retirement benefits under the laws of this
20 state which had accrued to or vested in such personnel prior to the ef-
21 fective date of this section. Such person's services shall be deemed to
22 have been continuous. All transfers of personnel positions in the classified
23 service under the Kansas civil service act shall be in accordance with civil
24 service laws and any rules and regulations adopted thereunder. This sec-
25 tion shall not affect any matter pending before an administrative hearing
26 officer at the time of the effective date of the transfer, and such matter
27 shall proceed as though no transfer of employment had occurred.

28 New Sec. 4. On and after July 1, ~~2008~~: _____ 2009

29 (a) When any conflict arises as to the disposition of any power, func-
30 tion or duty or the unexpended balance of any appropriation as a result
31 of any abolition, transfer, attachment or change made by or under au-
32 thority of this act, such conflict shall be resolved by the governor, whose
33 decision shall be final.

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

42 New Sec. 5. On and after July 1, ~~2008~~: _____ 2009

43 (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.

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

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

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

New Sec. 6. (a) On and after July 1, ~~2008~~, 2009 the balance of all funds appropriated and reappropriated to the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act is hereby transferred to the office of administrative hearings and shall be used only for the purpose for which the appropriation was originally made.

(b) On and after July 1, ~~2008~~, 2009 the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act, or who become a part of the office of administrative hearings established by this act, or the powers, duties and functions of which are transferred to the office of administrative hearings provided for by this act, shall be assumed and paid by the office of administrative hearings established by this act.

Sec. 7. On and after July 1, ~~2004~~, 2005 K.S.A. 2-1208a is hereby amended to read as follows: 2-1208a. (a) If it shall appear to the secretary or an authorized representative of the secretary from examination or analysis of an official sample of a commercial fertilizer that the commercial fertilizer is falsely labeled or fails to comply with the provisions of this act, the secretary shall cause notice to be given to the person in possession of the commercial fertilizer and the registrant that a hearing in relation thereto will be held at a date and place named in such notice. Whereupon the secretary or ~~an authorized representative of the secretary~~ *a presiding officer from the office of administrative hearings* shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act.

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

16 Sec. 8. On and after July 1, ~~2004~~, K.S.A. 2-3311 is hereby amended 2005
 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.*

32 Sec. 9. On and after July 1, ~~2007~~, K.S.A. 8-2426 is hereby amended 2008
 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.

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.

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
 29 of physical force or violence against any person.

30 (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

2005

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
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.

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

33 (e) A law enforcement officer.

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

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

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

40 (22) "State" or "this state" means the state of Kansas and all land and
41 water in respect to which the state of Kansas has either exclusive or con-
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

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- 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.

2009

13 Sec. 11. On and after July 1, ~~2008~~, K.S.A. 31-140 is hereby amended
14 to read as follows: 31-140. Any person aggrieved by any order or ruling
15 issued pursuant to the provisions of this act may appeal such order or
16 ruling to the state fire marshal within 15 days from the date of the service
17 of such order by filing a notice of such appeal in the office of the state
18 fire marshal. The state fire marshal or ~~the state fire marshal's authorized~~
19 *representative a presiding officer from the office of administrative hear-*
20 *ings* shall hear such person within 30 days after the receipt of such notice
21 of appeal, and the hearing shall be held in accordance with the provisions
22 of the Kansas administrative procedure act. The state fire marshal shall
23 file a decision thereon and, unless by authority of the state fire marshal
24 the order is revoked or modified, the order shall be complied with within
the time fixed in such decision.

2007

25 Sec. 12. On and after July 1, ~~2006~~, K.S.A. 36-509 is hereby amended
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
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-

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1 ized by article 33 of chapter 40 of the Kansas Statutes Annotated and
 2 ~~subsection (c) of K.S.A. 40-920, 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-*
ive hearings shall establish a time and place for a hearing on the matter.

2008

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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,~~ 2007 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
or threaten to refuse to cooperate with the provisions of this act, may file
with the commission a verified complaint asking for assistance by concil-

ation 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.

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

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r 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.

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

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

(i) Any complaint filed pursuant to this act must be so filed within six
 23 months after the alleged act of discrimination, unless the act complained
 24 of constitutes a continuing pattern or practice of discrimination in which
 25 event it will be from the last act of discrimination. Complaints filed with
 26 the commission ~~on or after July 1, 1996,~~ may be dismissed by the com-
 27 mission on its own initiative, and shall be dismissed by the commission
 28 upon the written request of the complainant, if the commission has not
 29 issued a finding of probable cause or no probable cause or taken other
 30 administrative action dismissing the complaint within 300 days of the
 31 filing of the complaint. The commission shall mail written notice to all
 32 parties of dismissal of a complaint within five days of dismissal. ~~Com-~~
 33 ~~plaints filed with the commission before July 1, 1996, shall be dismissed~~
 34 ~~by the commission upon the written request of the complainant, if the~~
 35 ~~commission has not issued a finding of probable cause or no probable~~
 36 ~~cause or taken other administrative action dismissing the complaint within~~
 37 ~~300 days of the filing of the complaint.~~ Any such dismissal of a complaint
 38 in accordance with this section shall constitute final action by the com-
 39 mission which shall be deemed to exhaust all administrative remedies
 40 under the Kansas act against discrimination for the purpose of allowing
 41 subsequent filing of the matter in court by the complainant, without the
 42 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-
42 section (k) or (m). In addition to the parties, a copy of any final order
43 all be served on the attorney general and such other public officers as

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the commission may deem proper.

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

Sec. 16. On and after July 1, ~~2007~~, K.S.A. 49-606 is hereby amended 2008

to read as follows: 49-606. (a) The director, with the approval of the commission, may deny issuance or renewal of a license for repeated or willful violation of the provisions of this act or for failure to comply with any provision of a reclamation plan.

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

Sec. 17. On and after July 1, ~~2006~~, K.S.A. 65-163 is hereby amended 2007

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

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

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

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

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

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

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

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

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

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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.

2007

7 Sec. 18. On and after July 1, 2006, K.S.A. 65-163a is hereby amended
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,*
23 *shall be subject to the provisions of the Kansas administrative procedure*
24 *act.* Any action of the secretary pursuant to this section is subject to review
25 in accordance with the act for judicial review and civil enforcement of
26 agency actions. The court on review shall hear the appeal without delay.

2007

27 Sec. 19. On and after July 1, 2006, K.S.A. 65-525 is hereby amended
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,
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
33 a child care facility, maternity center or family day care home in the
34 possession of the department of health and environment or its agents
35 shall not be released publicly unless required by law.

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

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

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

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

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

Sec. 20. On and after July 1, ~~2006~~, K.S.A. 65-526 is hereby amended to read as follows: 65-526. (a) The secretary of health and environment, in addition to any other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory of the provisions thereof or supplemental thereto, may assess a civil fine, after proper notice and an opportunity to be heard *in accordance with the Kansas administrative procedure act*, against a licensee or registrant for each violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. Each civil fine assessed under this section shall not exceed \$500. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

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

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PROPOSED AMENDMENT

COMMENT

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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.

2007

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:

2005

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

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any rules and regulations promulgated thereunder;

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

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

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

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

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

12 Sec. 23. On and after July 1, ~~2004~~ 2005, K.S.A. 65-786 is hereby amended

14 to read as follows: 65-786. (a) If the secretary determines after notice and
15 opportunity for a hearing that any person has engaged in or is engaging
16 in any act or practice constituting a violation of any provision of this act
17 or any rules and regulations or order issued thereunder, the secretary
18 may require that such person cease and desist from the unlawful act or
19 practice and take such affirmative action as in the judgment of the sec-
20 retary will carry out the purposes of the violated or potentially violated
21 provision of this act or rules and regulations or order issued thereunder.

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

24 (b) If the secretary makes written findings of fact that there is a sit-
25 uation involving an immediate danger to the public health, safety or wel-
26 fare or that the public interest will be irreparably harmed by delay in
27 issuing an order under subsection (a), the secretary may issue an emer-
28 gency temporary cease and desist order. Such order, even when not an
29 order within the meaning of K.S.A. 77-502, and amendments thereto,
30 shall be subject to the same procedures as an emergency order issued
31 under K.S.A. 77-536, and amendments thereto. Upon the entry of such
32 an order, the secretary shall promptly notify the person subject to the
33 order that:

33 (1) It has been entered;

34 (2) the reasons therefor; and

35 (3) that upon written request from the person subject to the order
36 within 15 days after service of the order the matter will be set for a hearing
37 which shall be conducted in accordance with the provisions of the Kansas
38 administrative procedure act. *Any such hearing shall be held by the sec-*
39 *retary or presiding officer from the office of administrative hearings.* If
40 no hearing is requested and none is ordered by the secretary, the order
41 will remain in effect until it is modified or vacated by the secretary. If a
42 hearing is requested or ordered the secretary, after giving notice of and
43 opportunity for hearings to the person subject to the order, shall by writ-

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

2007

3 Sec. 24. On and after July 1, ~~2006,~~ K.S.A. 65-2305 is hereby
4 amended to read as follows: 65-2305. (a) The secretary of health and
5 environment shall have the power and authority and is hereby charged
6 with the duty of enforcing the provisions of this act, and the secretary is
7 hereby authorized and directed to make, amend or revoke rules and reg-
8 ulations and orders for the efficient enforcement of this act.

9 (b) In the event of findings by the secretary that there is an existing
10 or imminent shortage of any ingredient required to enrich flour, white
11 bread or rolls in order to comply with this act, and that because of such
12 shortage the sale and distribution of flour or white bread or rolls may be
13 impeded by the enforcement of this act, the secretary shall issue an order,
14 to be effective immediately upon issuance, permitting the omission of
15 such ingredient from flour or white bread or rolls; and if the secretary
16 finds it necessary or appropriate, excepting such foods from the labeling
17 requirements of this act until the further order of the secretary. Any such
18 findings may be made without hearing on the basis of an order or of
19 factual information supplied by the appropriate agency or officer. In the
20 absence of any such order of the appropriate agency or factual informa-
21 tion supplied by it, the secretary on the secretary's own motion may, and
22 upon receiving the sworn statement of 10 or more persons subject to this
23 act that they believe such a shortage exists or is imminent shall hold a
24 public hearing as provided in subsection (f) with respect thereto, at which
25 any interested person may present evidence; and shall make findings
26 based upon the evidence presented.

27 (c) Whenever the secretary has reason to believe that such shortage
28 no longer exists, the secretary shall hold a public hearing as provided in
29 subsection (f), after notice shall have been given as provided in K.S.A.
30 77-421 prior to adoption of rules and regulations, at which any interested
31 person may present evidence, and the secretary shall make findings based
32 upon the evidence so presented. If the secretary's findings be that such
33 shortage no longer exists, the secretary shall issue an order revoking such
34 previous order. Undisposed floor stocks of flour on hand at the effective
35 date of such revocation order, or flour manufactured prior to such effec-
36 tive date, for sale in this state may thereafter be lawfully sold or disposed
37 of.

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

40 (e) For the purposes of this act, the secretary is authorized to take
41 samples for analysis and to conduct examinations and investigations
42 through any officers or employees under the secretary's supervision, and
such officers and employees shall have authority to enter, at reasonable

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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
 42 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.

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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 2007
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.

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 2007
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.

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
42 such request, unless such time period is waived or extended by written
43 consent of all parties or by a showing of good cause, ~~and shall give not~~

~~less than 10 days' written notice of the time and place of the hearing. Within 30 days after such hearing and receipt of briefs or oral arguments, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, the secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance of formal rules of evidence or pleading at any hearing before the secretary or director. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.~~

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

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

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

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(2) Any person aggrieved by any order or decision of the board made without a hearing, may, within 30 days after notice of the order or decision of the board make written request to the board for a hearing thereon. The board shall hear such party or parties in accordance with the provisions of the Kansas administrative procedure act at its next regular meeting or at a special meeting within 60 days after receipt of such request. ~~For the purpose of any hearing under this section, the board may appoint one or more presiding officers. Any such presiding officer shall be a mem-~~

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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.

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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
 42 service of process by any officer authorized to serve subpoenas in civil
 43 actions or by the commission or an agent or representative designated by

the commission. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

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

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

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

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

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

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

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

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

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

(1) The steward or racing judge mistakenly interpreted the law;

(2) new evidencing 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
14 regulating:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2007

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,
would constitute a felony;

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

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

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

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

9-35

(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~~, K.S.A. 2002 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. ~~On and after July 1, 1998:~~

2005

(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.*

or contract with

(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).~~ The office shall conduct adjudicative proceedings of the 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.

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

(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-

9-36

1 ~~trative 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
will be given;

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

19 ~~(3)~~ (2) to establish procedures and adopt forms, consistent with the
20 Kansas administrative procedure act, the model rules of procedure, and
21 other provisions of law, to govern administrative law judges, presiding
22 officers; and

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

25 ~~(5)~~ (3) to facilitate the performance of the responsibilities conferred
26 upon the office by the Kansas administrative procedure act.

27 (f) The director may:

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

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

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

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

38 (1) ~~On and after July 1, 2004:~~ Department of social and rehabilitation
39 services, juvenile justice authority, department on aging, state board of
40 pharmacy, Kansas dental board, state board of veterinary examiners, be-
41 havioral sciences regulatory board, state board of cosmetology, Kansas
42 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, 2005, 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. Such 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, 2005, 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

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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-
 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

14-41
9-41

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.

9-42

16 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
42 to read as follows: 77-549. (a) The filing of a return with the director of
43 ~~ation 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.*

2005

41 (b) *The provisions of this section shall not apply to the employment*
42 *security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto*
43 *article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532*

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and 44-5,120 and amendments thereto, concerning the workers compensation act.

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

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

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

2009

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

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

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

2007

Sec. 44. On and after July 1, ~~2006~~, K.S.A. 79-3313 is hereby amended to read as follows: 79-3313. All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and pay-

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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.

2005

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

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

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

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

39 ~~The director may appoint a hearing officer to conduct any hearings~~
40 ~~required by this act.~~ The hearings shall be conducted under the provisions
41 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 knowl-
2 edge of weather modification, the authority, to the extent that funds are
3 available therefor, may cooperate with, support, participate in and pro-
4 mote research, development and operational programs in:

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

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

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

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

17 (1) For the administration of this act;

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

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

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

27 Sec. 46. On and after July 1, ~~2004,~~ K.S.A. 82a-1501a is hereby
28 amended to read as follows: 82a-1501a. (a) The water transfer hearing
29 panel shall consist of the chief engineer, the director and the secretary.
30 The chief engineer shall serve as chairperson of the panel. All actions of
31 the panel shall be taken by a majority of the members. The panel shall
32 have all powers necessary to implement the provisions of this act.

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

2005

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ments thereto.

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

Sec. 47. On and after July 1, ~~2004~~²⁰⁰⁵, K.S.A. 82a-1502 is hereby amended to read as follows: 82a-1502. (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken for transfer unless: (1) The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever an emergency exists, a water transfer may be approved by the panel on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the panel.

(b) No water transfer shall be approved under the provisions of this act: (1) If such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water; and (2) unless the ~~hearing~~ *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~~ *hearing presiding* officer to be effective and if designed, implemented and maintained properly, will result in wise use and responsible conservation and management of water used by the system.

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

2005

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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.

2005

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~~
 42 *presiding* officer shall hold a prehearing conference which shall com-
 43 mence not less than 90 and not more than 120 days after the required

notice has been given and shall conclude not later than 45 days after commencement. Not less than 90 and not more than 120 days after the conclusion of the prehearing conference, the *hearing presiding* officer shall commence a formal public hearing. The formal public hearing shall be held in the basin of origin and, if deemed necessary by the *hearing presiding* officer, a public comment hearing shall be held in the basin of use. The formal public hearing shall conclude not later than 120 days after commencement and the initial order of the *hearing presiding* officer approving or disapproving the water transfer shall be issued not later than 90 days after conclusion of the formal public hearing. The *hearing presiding* officer may extend a time limit provided by this subsection, but only with the written consent of all parties or for good cause shown.

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

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

(e) At intervals during or at the conclusion of the hearing, the *hearing presiding* officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: The hearing facility, the court reporter, the salary of a *hearing presiding* officer who is not paid for services as a hearing 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.

2005

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

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

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

2005

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.

2007

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

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

2008

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

2009

Sec. 53. On and after July 1, ~~2009~~, K.S.A. 31-140, 76-3110 and 77-
551 as amended by section 41 of this act and K.S.A. 2002 Supp. 77-514
as amended by section 37 of this act are hereby repealed.

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

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MEMORANDUM

TO: Sen. John Vratil

FROM: Judicial Council - Randy M. Hearrell

DATE: February 2, 2004

RE: SB 141 - Administrative Procedure

- 1. Letter from KPERS. Attached is a copy of a letter I received from KPERS suggesting that their Executive Director be authorized to hear administrative hearings. That is not consistent with the philosophy of the act. Their Executive Director is not the agency head, the board is the agency head.
- 2. As to Revenue, I note that on page 5, lines 36 & 37, it provides the director of vehicles may hear cases relating to "dealer plates" (K.S.A. 8-2406) and "full privilege license plates" (K.S.A. 8-2425). To be consistent with the philosophy of the act, "director of vehicles or a" should be stricken.
- 3. Page 41, line 4, Technical change. Strike "2004" and insert "2005".

Senate Judiciary

2-2-04
Attachment 10



KANSAS

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

KATHLEEN SEBELIUS, GOVERNOR

January 27, 2004

Senator John Vratil, Chairperson
Senate Judiciary Committee
300 SW 10th Avenue, Room 522-S
Topeka, KS 66612-1504

Re: 2004 Senate Bill 358

Dear Senator Vratil:

This morning I had the opportunity to speak with Randy Hearrell of the Judicial Council Administrative Procedure Advisory Committee about Senate Bill 358. The Kansas Public Employees Retirement System supports SB 358 and, in fact, uses the Office of Administrative Hearings on a consistent and regular basis. However, as I discussed with Mr. Hearrell this morning—as well as last year when SB 141 was proposed—KPERS is concerned that the language specific to the Retirement System is inconsistent with the language affecting other administrative agencies, and that this particular inconsistency leaves KPERS without the same options as provided the other agencies.

Mr. Hearrell asked me to write this letter to you so that at some point the language affecting KPERS within SB 358 could be amended to more closely mirror that affecting the other agencies. Specifically, throughout SB 358 each agency is provided the opportunity to select a hearing officer, itself, or it has the option of utilizing the services of the Office of Administrative Hearings. Unfortunately, in section 29 of SB 358, which amends K.S.A. 74-4904(2) of the Retirement Act, the language permitting the KPERS board to appoint a hearing officer is stricken. KPERS respectfully requests that its board of trustees be allowed to appoint a hearing officer as well as retain the option to use the Office of Administrative Hearings. Enclosed is KPERS' suggested language to correct section 29 of SB 358.

Thank you for your time with regard to this matter and if you have any questions, please don't hesitate to contact me at 785-296-6059.

Sincerely,



Laurie McKinnon
General Counsel

Enclosure

cc: Randy Hearrell, Judicial Council
Mark Braun, Office of Administrative Hearings

Section 29, in part, of Senate Bill 358 as it now reads:

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

KPERS' revision to include clean-up of technical errors and the addition of language that will provide KPERS a choice to use the OAH or not, parallel to the language that exists in all other sections of Senate Bill 358:

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