

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:32 A.M. on March 24, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused
Donald Betts- absent
Greta Goodwin arrived, 9:34 A.M.
David Haley arrived, 10:01 A.M.
Phil Journey arrived, 9:42 A.M.
Julia Lynn- excused
Dwayne Umbarger arrived, 9:46 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Debra Zehr, President, Kansas Association of Homes and Services for the Aging
Ray Vernon, CEO, Wesley Towers, Hutchinson
Gilbert Cruz, Kansas Long Term Care Ombudsman

Others attending:

See attached list.

The Chairman opened the hearing on **SB 671–Mistreatment of dependent adults; increased penalties; definition of fiduciary abuse.**

Debra Zehr testified in support, stating **SB 671** is a first step in preventing the financial exploitation of the elderly (Attachment 1). Ms. Zehr requested the committee refer the topic to an interim legislative study and suggest the formation of a task force to address the concerns

Ray Vernon appeared in support, stating he has seen many frail, elderly Kansans financially exploited and impoverished by their loved ones (Attachment 2). The problem appears to be escalating in recent years leaving victims destitute and increased consequences for offenders should be implemented.

Gilbert Cruz spoke in support, indicating the bill would protect residents from financial abuse and the mental anguish caused by such actions (Attachment 3). Enactment of **SB 671** will help protect the health and property of dependent adults.

Written testimony in support of **SB 671** was submitted by:

Cindy Luxem, Kansas Health Care Association (Attachment 4)
Mitzi McFatrach, Kansas Advocates for Better Care (Attachment 5)
Brian Caswell, President, Wolkar Drug (Attachment 6)

There being no further conferees, the hearing on **SB 671** was closed.

The Chairman called for final action on **SB 591–Allowing offenders who owe fines or restitution to be issued a restricted driver's license if they are in compliance with a payment agreement.** Senator Journey reviewed the bill and indicated amendments are not ready. The Senator requested the Chairman to hold action until a later date. The Chairman stated given the time constraints he could not guarantee there would be time later this week but agreed to try and reschedule the bill.

The Chairman called for final action on **HB 2644–Revises sections of the guardianship and conservator act concerning the procedure for appointing a guardian or conservator.** The Chairman reviewed the bill, there were no amendments proposed.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:32 A.M. on March 24, 2008, in Room 123-S of the Capitol.

Senator Bruce moved, Senator Goodwin seconded, to recommend **HB 2644** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2700–Community corrections in Johnson County; adult offender program extended to July 1, 2009.** The Chairman reviewed the bill.

Senator Journey moved, Senator Donovan seconded, to extend the sunset date on **HB 2700** by striking the year “2009” on page 2, lines 6, 19, and 24 and inserting the year “2010”. Motion carried.

Senator Journey moved, Senator Umbarger seconded, to recommend **HB 2700** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2726–Polygraph examinations prohibited for certain alleged victims.** The Chairman reviewed the bill, there were no proposed amendments.

Senator Bruce moved, Senator Umbarger seconded, to recommend **HB 2726** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2707–Theft, intent to deprive, leased or rented motor vehicles.**

Senator Schmidt moved, Senator Donovan seconded, to amend **HB 2707** by removing the House floor amendment, Section 1 of the bill. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to amend **HB 2707** by adding the provisions of **Sub SB 409** dealing with third time theft offenses. Motion carried.

Chairman Vratil distributed a balloon amendment providing clarifying language to page 2, line 30 of the bill (Attachment 7). Senator Schmidt moved, Senator Donovan seconded, to amend **HB 2707** as reflected the balloon amendment. Motion carried.

Senator Donovan moved, Senator Schmidt seconded, to recommend **HB 2707** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **Sub HB 2618–Administrative procedure amendments; office of administrative hearings, presiding officers, actions negatively affecting licensure, judicial review.** The Chairman reviewed the bill.

Senator Journey moved, Senator Donovan seconded, to amend **Sub HB 2618** by striking the House floor amendment creating New sections 1 and 2 consisting of page 1, lines 1-21 and page 2, line 1-16. Motion carried.

Senator Journey distributed a balloon amendment and reviewed the proposed changes (Attachment 8).

Senator Journey moved, Senator Haley seconded, to amend **Sub HB 2618** as reflected in the balloon amendment. Motion failed.

Senator Bruce distributed a balloon amendment and reviewed the proposed changes (Attachment 9).

Senator Bruce moved, Senator Donovan seconded, to amend **Sub HB 2618** as reflected in the balloon amendment. Motion carried.

Senator Bruce moved, Senator Journey seconded, to recommend **Sub HB 2618** as amended, favorably for passage. Motion carried. Senator Haley voted no and requested his vote be recorded.

The Chairman called for final action on **HB 2642–Commission on judicial performance; access to court records; immunity from liability.** The Chairman reviewed the bill and distributed a proposed balloon

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:32 A.M. on March 24, 2008, in Room 123-S of the Capitol.

amendment from the Kansas Commission on Judicial Performance (Attachment 10).

Senator Journey moved, Senator Goodwin seconded, to amend **HB 2742** as reflected the balloon amendment. Motion carried.

Senator Journey moved, Senator Bruce seconded, to recommend **HB 2742** as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:20 A.M. The next scheduled meeting is March 25, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 24, 2008

| NAME | REPRESENTING |
|----------------|--|
| Pam Scott | KS Funeral Directors Assn |
| Mack Smith | KS St Bar of Mortuary Arts |
| Beth Lange | SRS |
| ERIK SARTORIUS | City of Overland Park |
| Jeff Bottenbra | Polsinelli Law Firm |
| SEAN MILICE | CAPITOL STRATEGIES |
| TRACY DIEL | Admin Hearings |
| Sherry Diel | KS Real Estate Comm |
| George Barbee | Bd of Tech Prof. |
| Jean Bolino | Bd of Tech. Prof. |
| Megan Somers | KS Bd of Accountancy |
| Cynthia Bail | LTC Ombudsman |
| Millet | SLTGO |
| Gail Bright | Office of the Kansas Securities Commissioner |
| Whitney Damron | KS Automobile Dealers Assn. |
| Don McNeely | KS Automobile Dealers Assn. |
| Joanna Kristin | KDOA |
| Barbara Conant | KDOA |

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 24, 2008

| NAME | REPRESENTING |
|---------------------|------------------------------|
| Loren F. Snell, Jr. | Ks Attorney General's Office |
| Heleen Pedigo | KSC |
| Julius Masler | Gov. office |
| Paul Langshell | KID |
| LARRY BUENING | BO OF HEALING ARTS |
| Shamika Stamp | KAAAC |
| Marge Petty | KCC |
| Carmen Alldred | KDOR |
| Dannette Korman | KDOR |
| Mara Buzak | KDOR |
| Scott Heidner | ACEC Kansas |
| Ken Seelher | Hein Law Firm |
| Tom Whitaker | KMC A |
| Richard Samaniego | Kearney & ASSEC |
| John Peterson | Crystal Strategy, Inc. |
| Callee Hattie | Ks Assn for Justice |
| | |
| | |



To: Chairman John Vratil, and Members,
Senate Judiciary Committee
From: Debra Zehr, President
Date: Monday, March 24, 2008

Testimony in Support of Senate Bill 671

Thank you, Chairman Vratil and Members of the Committee. I am Debra Zehr, President of the Kansas Association of Homes and Services for the Aging. Over 20,000 older Kansans are served everyday by KAHSA's 160 not-for-profit nursing homes, retirement communities, assisted living and senior housing facilities, and community-based service programs.

We support Senate Bill 671. It amends the definition of "mistreatment of dependent adult" to include failure to pay for services on the part of the person who is responsible for the dependent adult. In addition it increases fines to a range of \$500 to \$75,000, depending on severity of offense. The bill coincides with a recommendation made by the Office of the Attorney General's Abuse, Neglect and Exploitation Unit in its first annual report to "enhance damages and penalties for financial crimes against vulnerable adults."

The perpetrators of financial exploitation of the elderly are often family members or friends of their victims. They obtain control and drain the assets of their victims through financial and legal arrangements like joint bank accounts, deed or title transfers, power of attorney and living trusts. They use deceit, coercion, intimidation, emotional abuse, social isolation or empty promises to get their way and many times to make it appear to others that the victim willingly "gave" their money away. Victims are left destitute, in mental anguish, and at potential for harm because they cannot pay for critical services.

Senate Bill 671 is a first step to address this growing problem. Much more work is needed. We also respectfully ask that the Committee: 1) refer the topic of financial exploitation for an interim legislative study, 2) direct the appropriate state agencies to form a public/private multi-agency task force to identify action steps to prevent, identify and prosecute financial exploitation and to report back to the Legislature on their progress and to develop recommendations for other statutory changes to help tackle the problem.

Thank you for consideration of this serious issue. I would be happy to answer questions.

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Senate Judiciary
3-24-08
Attachment 1



Wesley Towers

Hutchinson, Kansas

March 24, 2008

Good morning, Chairman Vratil and Members of the Committee.

My name is Ray Vernon. I am the President/CEO of Wesley Towers, a 39 year old Methodist-sponsored continuing care retirement community in Hutchinson. We serve 340 residents and have 265 employees.

I am here today to voice strong support for Senate Bill 671. I am a licensed adult care home administrator with 23 years of experience in this profession. Over the years I have seen many frail, elderly Kansans financially exploited and impoverished by their loved ones. Many of these situations bring me to the point of anger toward individuals who have taken advantage of our vulnerable residents.

Here's an example. We have a couple in our healthcare area. She is 90 years old and has dementia. He is 95 years old and legally blind, but mentally competent. Their daughter is designated as Power of Attorney for their assets.

For many months we have not received payment for services, even though a year ago more than adequate resources were reported on their financial statement. After 8 months of nonpayment, the daughter indicated that she was unable to pay her parents' bills. She has even withheld their social security checks for payment. As a result, Wesley Towers has been paying their pharmacy bill and carrying the cost of their care. At the same time, due to the daughter's financial exploitation, SRS has not been able to qualify them for Medicaid. The couple is completely distraught. The wife is refusing medications. The husband is trying to pursue legal remedies. The entire family has been torn apart.

In another situation, the son of an 82 year old retired teacher drained the lady's savings account without her knowledge to finance his own business and pleasure trips. She was crushed when the son told her this was "his money and inheritance" and that she should "go on welfare" to pay her bills. This is a common problem—conversion of assets for personal use.

I could share many other stories of theft and betrayal of frail elderly citizens by family members and friends. I think you get the picture. In conversations with my colleagues around the state, I hear the same kinds of heart-wrenching stories over and over. **This problem is becoming epidemic** and we believe that more severe consequences should be implemented for people committing these crimes against our most vulnerable citizens.

Thank for you time and favorable consideration of Senate Bill 671.

Ray Vernon, CEO

Senate Judiciary

3-24-08

Attachment 2

TESTIMONY

Senate Judiciary Committee
Chairman John Vratil

Presented by Gilbert Cruz
Kansas State Long-Term Care Ombudsman
March 24, 2008

Chairman Vratil and Members of the Judiciary Committee:

Thank you for allowing me to testify in support of Senate Bill 671. The State Long-Term Care (LTC) Ombudsman Program represents the rights of nearly 28,000 individuals located in adult care homes throughout Kansas including nursing facilities, assisted living facilities, home plus facilities, long-term care units (LTCU), and adult daycares. We are a state agency specifically designed to provide FREE advocacy assistance to LTC residents. Please note the ombudsman program does not have jurisdiction dealing with individuals at home, mentally retarded nursing facilities, and psychiatric hospitals.

Every year the State LTC Ombudsman Office submits an annual report of complaint history. In this report we use categories that breakdown complaints into five main groups (see attachment). In analyzing 2005-2007 report data, an increase in complaint history is evident. Particularly, resident rights and the non-provider section where financial exploitation and fiduciary abuse occur.

We are asking for your support of SB 671, which would protect residents from:

- Financial Abuse, Neglect and Exploitation
- Mental anguish and trauma occurring after such incidents
- Issues of possible discharge due non-payment

Advocating for resident rights is paramount to the LTC ombudsman program. SB 671 offers a pathway in dealing with the growing number of fiduciary abuse cases which is a serious matter to residents residing in adult care homes throughout Kansas. The ombudsman program strongly encourages the committee to champion SB 671 to protect the health and property of residents.

I encourage your comments or questions the committee might have for me.

Complaint Types

- Abuse, Neglect, and Exploitation
- Dignity & Respect Issues
- Medicare
- Medicaid
- Privacy
- Call lights
- Food Service
- Access to own records
- Personal Hygiene
- Dental Services
- Care Plan
- Resident and Family Councils
- Home Care
- Exercise Right to Refuse Care
- Access to facility survey
- Grievance Procedure
- Facility Cleanliness
- Restraints
- Activities
- Discharge
- Legal Guardianship, Conservatorship, Power of Attorney
- Level of Care
- Family Conflict or Interference

2005 – 2007

Categories and Number of Complaints

Ombudsmen are advocates for residents of long-term care facilities in Kansas.

Our advocacy role takes two forms:

- Receiving and resolving individual complaints and concerns by, or on behalf of, these residents; and
- Pursuing resident advocacy in the long-term care system, its laws, policies, regulations, and administration through public education and collaboration.

Ombudsmen investigate the situation, determine what steps the resident has taken towards resolution, suggest ways in which the resident can advocate for himself or herself, or personally advocate on the residents behalf.

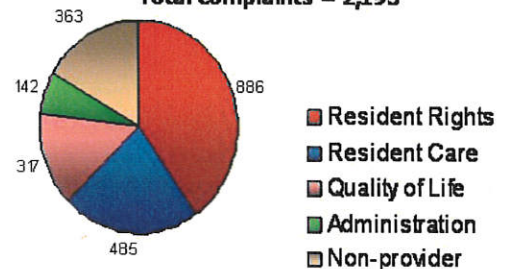
The Administration on Aging defines 133 types of complaints that are grouped into the five main categories

- Resident Rights
- Resident Care
- Quality of Life
- Administration
- Non-Provider

2005

Categories & Numbers of Complaints

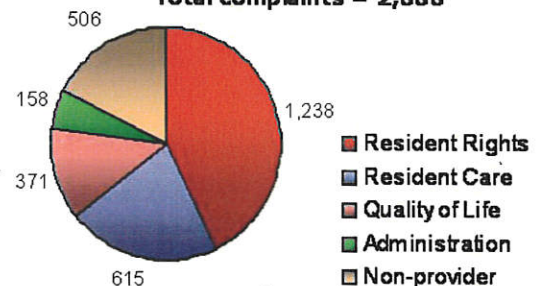
Total complaints = 2,193



2006

Categories & Numbers of Complaints

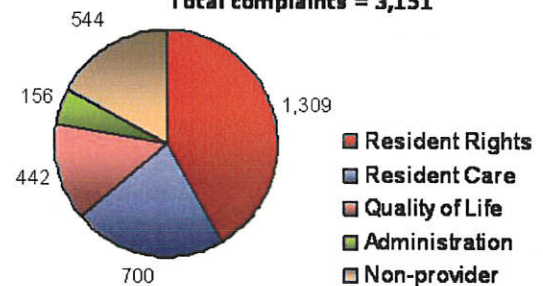
Total complaints = 2,888



2007

Categories & Numbers of Complaints

Total complaints = 3,151





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khca@khca.org E-mail

kcal ahca

March 21, 2008

Mr. Chairman and Committee Members:

On behalf of the Kansas Health Care Association and Kansas Center for Assisted Living membership and residents, I appreciate the opportunity to provide favorable testimony for SB 671-

The issue of financial exploitation is an unfortunate fact of being an older citizen. And sadly many in the nursing home and assisted living provider community see too many examples of family members exploiting each other. We applaud the Kansas Association of Homes and Services for the Aging bringing this issue to the legislature. We know they have worked with other stakeholders to bring this legislation that would prevent and inhibit financial exploitation of elders through stronger penalties and fines on those who are convicted of or who plead *no contention* to financially exploiting an elder.

Thanks for the opportunity to offer support.

Cindy Luxem

CEO, Kansas Health Care Association/Kansas Center for Assisted Living.

Senate Judiciary

3-24-08

Attachment 4



913 Tennessee, Suite 2 Lawrence, KS 66044-6904
phone: (785) 842-3088 toll-free: (800) 525-1782 fax: (785) 749-0029
e-mail: info@kabc.org website: www.kabc.org

SB 671
Mistreatment of Dependent Adults

March 21, 2008

Honorable Chairman Vratil
and Senate Judiciary Committee Members:

Kansas Advocates for Better Care is supportive of SB 671 and recommends additional language to change some offense classifications.

Kansas Advocates for Better Care (KABC) is a statewide non-profit organization of consumers that advocates for quality long-term care. KABC has been assisting/guiding consumers for more than 30 years and is especially concerned with the protections available to vulnerable frail adults.

Kansas Advocates for Better Care strongly supports the provisions included in SB 671 that change the classification of mistreatment charges and with the increase of accompanying penalties for mistreatment of a dependent adult related to physical abuse and financial abuse. The changes in classification and additional penalties hopefully will be a greater force to prevent or deter those who would take unfair financial advantage of or physically mistreat a frail elder or other dependent adult. Specifically we would like to see residents protected from possible discharge for reasons of non-payment.

Kansas Advocates for Better Care encourages the committee to change the classification along with increasing the penalties related to (a) (3) "omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult." Under (e) (6) "Mistreatment of a dependent adult as defined in subsection (a) (3) is a class A person misdemeanor. *In addition to the term of confinement in the county jail as authorized by law, the offender shall be fined not less than \$500.*" This subsection is dealing with neglect of a vulnerable, dependent adult and specific examples might include lack of access to routine or acute healthcare, lack of proper nutrition, hydration or assistance with feeding, not providing adequate continence care. The results of any of these actions or lack of action could have dire results including death for dependent adults. Changing the classification of these offenses from a class A person misdemeanor to level(s) more appropriate to the offense would be very appropriate in the context of this legislation.

The vulnerable adults who depend on the integrity, compassion and responsible actions of others charged with caring for them and for the oversight and disbursement of their financial resources deserve the highest level of protection.

Thank you for this opportunity to testify in support of SB 671.

Mitzi E. McFatrach
Executive Director

Senate Judiciary

3-24-08

Attachment 5

Vicky and Mary,

I have been involved with several cases such as this. It is unfortunately too common of a problem.

What I normally see is either a single guardian or a set of family members who choose to forego medications or the payment of a bill in order to "save" the family member their money. In reality they are just hoping to save enough money in order to have more for themselves when the patient passes away. It is a sad case and usually working together, myself and the nursing home, can place enough pressure on the family to rectify the problem. I had a particular case a few years ago that really made me upset enough to contact my State Representative, Doug Gatewood. Doug informed me that there was a state Ombudsman that looked out for cases such as this. I made a contact and the problem was taken care of shortly thereafter. I am unaware of what took place with the family and the Ombudsman, just that the bill with the nursing home and my pharmacy was taken care of shortly after the contact.

I am not aware of a growing trend; this has always been a perceived problem as far as I am concerned. I think that some assistance from a legislative front would be welcomed for pharmacies that have a fairly large Long Term Care population and the facilities themselves.

Take care,

*Brian Caswell R.Ph.
President - Wolkar Drug
2303 Military Ave.
Baxter Springs, KS. 66713
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fax (620) 856-3455
www.wolkardrug.com*

1 [(B) If the violator is 18 years of age or older, order the division of
 2 vehicles to suspend the driving privileges of such violator for five years.
 3 Upon receipt of the court order, the division shall notify the violator and
 4 suspend the driving privileges of the violator for five years whether or
 5 not the violator has a driver's license.

6 [(c) The director may revoke the license or permit to drive or
 7 any nonresident operating privilege of any person so convicted.]

8 Section ~~1~~ [2.] K.S.A. 21-3702 is hereby amended to read as follows:
 9 21-3702. (a) In any prosecution under this article, the following shall be
 10 prima facie evidence of intent to permanently deprive the owner or lessor
 11 of property of the possession, use or benefit thereof:

12 (1) The giving of a false identification or fictitious name, address or
 13 place of employment at the time of obtaining control over the property;

14 (2) the failure of a person who leases or rents personal property to
 15 return the same within 10 days after the date set forth in the lease or
 16 rental agreement for the return of the property, if notice is given to the
 17 person renting or leasing the property to return the property within seven
 18 days after receipt of the notice, in which case the subsequent return of
 19 the property within the seven-day period shall exempt such transaction
 20 from consideration as prima facie evidence as provided in this section;

21 (3) destroying, breaking or opening a lock, chain, key switch, enclo-
 22 sure or other device used to secure the property in order to obtain control
 23 over the property; ~~or~~

24 (4) destruction of or substantially damaging or altering the property
 25 so as to make the property unusable or unrecognizable in order to obtain
 26 control over the property; ~~or~~

27 (5) *the failure of a person who leases or rents from a commercial*
 28 *renter a motor vehicle under a written agreement that provides for the*
 29 *return of the motor vehicle to a particular place at a particular time, if*
 30 *notice has been given to the person renting or leasing the motor vehicle*
 31 *within three calendar days from the date of the receipt or refusal of the*
 32 *demand. In addition, if such vehicle has not been returned after demand,*
 33 *the lessor may notify the local law enforcement agency of the failure of*
 34 *the lessee to return such motor vehicle and the local law enforcement*
 35 *agency shall cause such motor vehicle to be put into any appropriate state*
 36 *and local computer system listing stolen motor vehicles; or*

37 (6) **the failure of a person who is provided with a use of a ve-**
 38 **hicle by the owner of the vehicle to return it to the owner pursuant**
 39 **to a written instruction specifying: (A) The time and place to return**
 40 **the vehicle; and (B) that failure to comply may be prosecuted as**
 41 **theft, and such instructions are delivered to the person by the**
 42 **owner at the time the person is provided with possession of the**
 43 **vehicle. In addition, if such vehicle has not been returned pursuant**

to return such vehicle

Substitute for HOUSE BILL No. 2618

By Committee on Judiciary

2-27

Proposed Amendment
Senator Journey

Prepared by Revisor of Statutes Office
Bruce Kinzie

March 24, 2008

Senate Judiciary
3-24-08
Attachment 8

10 AN ACT concerning administrative procedure; [relating to interpre-
11 tation of federal statutes, regulations and national codes;]
12 amending K.S.A. 77-502, 77-512, 77-516, 77-525, 77-526, [77-619,]
13 77-620 and 77-621 and K.S.A. 2007 Supp. 75-37,121, 77-514, 77-527
14 and 77-551 and repealing the existing sections; also repealing K.S.A.
15 2007 Supp. 74-599, K.S.A. 2003 Supp. 77-514, as amended by section
16 39 of chapter 145 of the 2004 Session Laws of Kansas, and K.S.A. 77-
17 551, as amended by section 43 of chapter 145 of the 2004 Session
18 Laws of Kansas.

19
20 *Be it enacted by the Legislature of the State of Kansas:*

21 [New Section 1. In the event a Kansas state agency is inter-
22 preting or enforcing a federal regulation, a federal statute or a
23 national building or fire code and such regulation, statute or code
24 is interpreted less restrictively by state officials in other states,
25 such less restrictive interpretation shall be applicable in Kansas
26 unless such less restrictive interpretation conflicts with a Kansas
27 statute, regulation or local ordinance or resolution.

28 [Sec. 2. K.S.A. 77-619 is hereby amended to read as follows:
29 77-619. (a) The court may receive evidence, in addition to that
30 contained in the agency record for judicial review, only if it relates
31 to the validity of the agency action at the time it was taken and is
32 needed to decide disputed issues regarding:

33 [(1) Improper constitution as a decision-making body; or im-
34 proper motive or grounds for disqualification, of those taking the
35 agency action; or

36 [(2) unlawfulness of procedure or of decision-making process;
37 or

38 [(3) interpretations in other states when a party is claiming the ap-
39 plication of section 1, and amendments thereto.

40 [(b) The court may remand a matter to the agency, before final
41 disposition of a petition for judicial review, with directions that the
42 agency conduct fact-finding and other proceedings the court con-
43 siders necessary and that the agency take such further action on

8-2

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

7 —(4) Effective July 1, 2008, any full-time presiding officer in agencies
8 specified in subsection (l)(4) which conduct hearings pursuant to the
9 Kansas administrative procedure act, except those exempted pursuant to
10 K.S.A. 77-551 and amendments thereto, and support personnel for such
11 presiding officers, shall be transferred to and shall become employees of
12 the office of administrative hearings. Such personnel shall retain all rights
13 under the state personnel system and retirement benefits under the laws
14 of this state which had accrued to or vested in such personnel prior to
15 the effective date of this section. Such person's services shall be deemed
16 to have been continuous. All transfers of personnel positions in the clas-
17 sified service under the Kansas civil service act shall be in accordance
18 with civil service laws and any rules and regulations adopted thereunder.
19 This section shall not affect any matter pending before an administrative
20 hearing officer at the time of the effective date of the transfer, and such
21 matter shall proceed as though no transfer of employment had occurred.

22 (5) (2) Effective July 1, 2009, any full-time presiding officer in agen-
23 cies specified in subsection (h)(5) which conduct hearings pursuant to the
24 Kansas administrative procedure act, except those exempted pursuant to
25 K.S.A. 77-551, and amendments thereto, and support personnel for such
26 presiding officers, shall be transferred to and shall become employees of
27 the office of administrative hearings. Such personnel shall retain all rights
28 under the state personnel system and retirement benefits under the laws
29 of this state which had accrued to or vested in such personnel prior to
30 the effective date of this section. Such person's services shall be deemed
31 to have been continuous. All transfers of personnel positions in the clas-
32 sified service under the Kansas civil service act shall be in accordance
33 with civil service laws and any rules and regulations adopted thereunder.
34 This section shall not affect any matter pending before an administrative
35 hearing officer at the time of the effective date of the transfer, and such
36 matter shall proceed as though no transfer of employment occurred.

37 (j) *Except as provided in K.S.A. 77-551, and amendments thereto, the*
38 *provisions of this section shall not apply to the state board of tax appeals*
39 *and the state corporation commission.*

40 Sec. 5. [5.] K.S.A. 77-502 is hereby amended to read as follows: 77-
41 502. As used in this act:

42 (a) "State agency" means any officer, department, bureau, division,
43 board, authority, agency, commission or institution of this state, except

and the Kansas insurance department other than in hearings before the Kansas insurance department in which the respondent is an agent or broker as such terms are defined in K.S.A. 2007 Supp. 40-4902, and amendments thereto

1 any difference in findings of fact, state the source of law which supports
2 any difference in legal conclusions, and state the policy reasons which
3 support any difference in the exercise of discretion. A final order under
4 this section shall include, or incorporate by express reference to the initial
5 order, all the matters required by subsection (c) of K.S.A. 77-526, and
6 amendments thereto.

7 (i) The agency head shall cause copies of the final order or order
8 remanding the matter for further proceedings to be served on each party
9 in the manner prescribed by K.S.A. 77-531, and amendments thereto.

10 (j) Unless a petition for reconsideration is a prerequisite for seeking
11 judicial review, a final order under this section shall state the agency
12 officer to receive service of a petition for judicial review on behalf of the
13 agency.

14 Sec. ~~40~~ **[12.]** K.S.A. 2007 Supp. 77-551 is hereby amended to read
15 as follows: 77-551. ~~(a) Except as provided in subsection (b), in all hearings~~
16 ~~of any state agency specified in subsection (h) of K.S.A. 75-37,121, and~~
17 ~~amendments thereto, that are required to be conducted in accordance~~
18 ~~with the provisions of the Kansas administrative procedure act, the pre-~~
19 ~~siding officer shall be the agency head, one or more members of the~~
20 ~~agency head or a presiding officer assigned by the office of administrative~~
21 ~~hearings. (a) (1) Notwithstanding any other provision of law to the con-~~
22 ~~trary, except as provided in subsection (b), on and after July 1, 2008,~~
23 ~~through June 30, 2009, in all adjudicative hearings of any state agency~~
24 ~~specified in subsections (h)(1), (h)(2), (h)(3) and (h)(4) of K.S.A. 75-~~
25 ~~37,121, and amendments thereto, that are required to be conducted in~~
26 ~~accordance with the provisions of the Kansas administrative procedure~~
27 ~~act, the presiding officer shall be a presiding officer assigned by the office~~
28 ~~of administrative hearings.~~

29 (2) *Notwithstanding any other provision of law to the contrary, except*
30 *as provided in subsection (b), on and after July 1, 2009, in all adjudicative*
31 *hearings of any state agency that are required to be conducted in accord-*
32 *ance with the provisions of the Kansas administrative procedure act, the*
33 *presiding officer shall be a presiding officer assigned by the office of ad-*
34 *ministrative hearings.*

35 (b) (1) The provisions of this section shall not apply to the employ-
36 ment security law, pursuant to K.S.A. 44-701 et seq., and amendments
37 thereto, or article 5 of chapter 44, and amendments thereto, except K.S.A.
38 44-532 and 44-5,120, and amendments thereto, concerning the workers
39 compensation act.

40 (2) *Notwithstanding any other provision of law to the contrary, in all*
41 *hearings of the state board of tax appeals and the state corporation com-*
42 *mission that are required to be conducted in accordance with the provi-*
43 *sions of the Kansas administrative procedure act, the presiding officer*

1 shall be the agency head or one or more members of the agency head. If
 2 the agency head or one or more members of the agency head is not the
 3 presiding officer, an officer assigned by the office of administrative hear-
 4 ings shall serve as the presiding officer.

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

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

14 Sec. ~~11~~ [13.] K.S.A. 77-620 is hereby amended to read as follows:
 15 77-620. (a) Within 30 days after service of the petition for judicial review,
 16 or within further time allowed by the court or by other provision of law,
 17 the agency shall transmit to the court the original or a certified copy of
 18 the agency record for judicial review of the agency action, consisting of
 19 any agency documents expressing the agency action;; other documents
 20 identified by the agency as having been considered by it before its action
 21 and used as a basis for its action; *any materials concerning a hearing*
 22 *conducted by, or initial order issued by, the office of administrative hear-*
 23 *ings related to the agency action;* and any other material required by law
 24 as the agency record for the type of agency action at issue, subject to the
 25 provisions of this section.

26 (b) If part of the record has been preserved without a transcript, the
 27 agency shall prepare a transcript for inclusion in the record transmitted
 28 to the court, except for portions that the parties stipulate to omit in ac-
 29 cordance with subsection (c). Unless otherwise ordered by the court, the
 30 cost of the preparation of the transcript shall be paid by the appellant.

31 (c) By stipulation of all parties to the judicial review proceedings, the
 32 record may be shortened, summarized or organized.

33 (d) The court may tax the cost of preparing transcripts and copies for
 34 the record against a party who unreasonably refuses to stipulate to
 35 shorten, summarize or organize the record.

36 (e) Additions to the record pursuant to K.S.A. 77-619, *and amend-*
 37 *ments thereto,* shall be made as ordered by the court.

38 (f) The court may require or permit subsequent corrections or ad-
 39 ditions to the record.

40 Sec. ~~12~~ [14.] K.S.A. 77-621 is hereby amended to read as follows:
 41 77-621. (a) Except to the extent that this act or another statute provides
 42 otherwise:

43 (1) The burden of proving the invalidity of agency action is on the

(3) Notwithstanding any other provision of law to the contrary, other than those hearings in which the respondent is an agent or broker as such terms are defined in K.S.A. 2007 Supp. 40-4902, and amendments thereto, all hearings of the Kansas insurance department 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 as provided by law.

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Substitute for HOUSE BILL No. 2618

By Committee on Judiciary

2-27

Balloon Amendment - 03/24/08 - Sen. Bruce

RS - SubHB2618Bruce.pdf (JThompson)

Senate Judiciary

3-24-08

Attachment 9

10 AN ACT concerning administrative procedure; [relating to interpretation of federal statutes, regulations and national codes;]
11 amending K.S.A. 77-502, 77-512, 77-516, 77-525, 77-526, [77-619,]
12 77-620 and 77-621 and K.S.A. 2007 Supp. 75-37,121, 77-514, 77-527
13 and 77-551 and repealing the existing sections; also repealing K.S.A.
14 2007 Supp. 74-599, K.S.A. 2003 Supp. 77-514, as amended by section
15 39 of chapter 145 of the 2004 Session Laws of Kansas, and K.S.A. 77-
16 551, as amended by section 43 of chapter 145 of the 2004 Session
17 Laws of Kansas.

state agency actions; relating to

and 82a-1037

,

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

20 [New Section 1. In the event a Kansas state agency is interpreting or enforcing a federal regulation, a federal statute or a
21 national building or fire code and such regulation, statute or code
22 is interpreted less restrictively by state officials in other states,
23 such less restrictive interpretation shall be applicable in Kansas
24 unless such less restrictive interpretation conflicts with a Kansas
25 statute, regulation or local ordinance or resolution.

26 [Sec. 2. K.S.A. 77-619 is hereby amended to read as follows:
27 77-619. (a) The court may receive evidence, in addition to that
28 contained in the agency record for judicial review, only if it relates
29 to the validity of the agency action at the time it was taken and is
30 needed to decide disputed issues regarding:

31 [(1) Improper constitution as a decision-making body; or improper motive or grounds for disqualification, of those taking the
32 agency action; or
33 [(2) unlawfulness of procedure or of decision-making process;

34 or
35 [(3) interpretations in other states when a party is claiming the application of section 1, and amendments thereto.

36 [(b) The court may remand a matter to the agency, before final
37 disposition of a petition for judicial review, with directions that the
38 agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on
39
40
41
42
43

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1 the basis thereof as the court directs, if:

2 [(1) The agency was required to base its action exclusively on
3 a record of a type reasonably suitable for judicial review, but the
4 agency failed to prepare or preserve an adequate record;

5 [(2) the court finds that (A) new evidence has become available
6 that relates to the validity of the agency action at the time it was
7 taken, that one or more of the parties did not know and was under
8 no duty to discover, or did not know and was under a duty to dis-
9 cover but could not reasonably have discovered until after the
10 agency action, and (B) the interests of justice would be served by
11 remand to the agency;

12 [(3) the agency improperly excluded or omitted evidence from
13 the record; or

14 [(4) a relevant provision of law changed after the agency action
15 and the court determines that the new provision may control the
16 outcome.

17 New Section ~~4~~ [3.] The presiding officer from the office of admin-
18 istrative hearings, on such presiding officer's own motion or the motion
19 of any party, may order certification of policy issues to an agency of this
20 state when it appears to the presiding officer that there are involved in
21 the proceeding before such presiding officer questions of policy which
22 may be determinative of the proceeding then pending and it appears to
23 the presiding officer that there are no established policies in statutes, rules
24 and regulations or agency precedents which are determinative of such
25 questions of policy.

26 Sec. ~~2~~ [4.] K.S.A. 2007 Supp. 75-37,121 is hereby amended to read
27 as follows: 75-37,121. (a) There is created the office of administrative
28 hearings within the department of administration, to be headed by a di-
29 rector appointed by the secretary of administration. The director shall be
30 in the unclassified service under the Kansas civil service act.

31 (b) The office may employ or contract with presiding officers, court
32 reporters and other support personnel as necessary to conduct proceed-
33 ings required by the Kansas administrative procedure act for adjudicative
34 proceedings of the state agencies, boards and commissions specified in
35 subsection (h). The office shall conduct adjudicative proceedings of any
36 state agency which is specified in subsection (h) when requested by such
37 agency. Only a person admitted to practice law in this state or a person
38 directly supervised by a person admitted to practice law in this state may
39 be employed as a presiding officer. The office may employ regular part-
40 time personnel. Persons employed by the office shall be under the clas-
41 sified civil service.

42 (c) If the office cannot furnish one of its presiding officers within 60
43 days in response to a requesting agency's request, the director shall des-

or any adjudicative hearings

hearings or

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1 ignate in writing a full-time employee of an agency other than the re-
2 questing agency to serve as presiding officer for the proceeding, but only
3 with the consent of the employing agency. The designee must possess the
4 same qualifications required of presiding officers employed by the office.

hearing or

5 (d) The director may furnish presiding officers on a contract basis to
6 any governmental entity to conduct any proceeding other than a pro-
7 ceeding as provided in subsection (h).

hearing or

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

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

hearing or

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

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

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

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

23 (h) *Except as provided in subsection (j), the following state agencies,*
24 *boards and commissions shall utilize the office of administrative hearings*
25 *for conducting adjudicative hearings, as defined in K.S.A. 77-502, and*
26 *amendments thereto, under the Kansas administrative procedures pro-*
27 *cedure act in which the presiding officer is not the agency head or one*
28 *or more members of the agency head:*

Delete

29 (1) On and after July 1, 2005: Department of social and rehabilitation
30 services, juvenile justice authority, department on aging, department of
31 health and environment, Kansas public employees retirement system,
32 Kansas water office, Kansas animal health department and Kansas insur-
33 ance department.

34 (2) On and after July 1, 2006: Emergency medical services board,
35 emergency medical services council, Kansas health policy authority and
36 Kansas human rights commission.

37 (3) On and after July 1, 2007: Kansas lottery, Kansas racing and gam-
38 ing commission, state treasurer, pooled money investment board; *and*
39 *Kansas department of wildlife and parks and state board of tax appeals.*

40 (4) On and after July 1, 2008: Department of human resources, *state*
41 *corporation commission,* state conservation commission, agricultural la-
42 bor relations board, department of administration, department of reve-
43 nue, board of adult care home administrators, Kansas state grain inspec-

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tion department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009, all other ~~Kansas administrative procedure act hearings state agencies, boards or commissions~~ not mentioned in subsections (1), (2), (3) and (4).

(i) (1) ~~Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.~~

~~(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.~~

~~(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to~~

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

7 —(4) Effective July 1, 2008, any full-time presiding officer in agencies
8 specified in subsection (h)(4) which conduct hearings pursuant to the
9 ~~Kansas administrative procedure act~~, except those exempted pursuant to
10 K.S.A. 77-551 and amendments thereto, and support personnel for such
11 presiding officers, shall be transferred to and shall become employees of
12 the office of administrative hearings. Such personnel shall retain all rights
13 under the state personnel system and retirement benefits under the laws
14 of this state which had accrued to or vested in such personnel prior to
15 the effective date of this section. Such person's services shall be deemed
16 to have been continuous. All transfers of personnel positions in the clas-
17 sified service under the Kansas civil service act shall be in accordance
18 with civil service laws and any rules and regulations adopted thereunder.
19 This section shall not affect any matter pending before an administrative
20 hearing officer at the time of the effective date of the transfer, and such
21 matter shall proceed as though no transfer of employment had occurred.

adjudicative

, as defined in K.S.A. 77-502,
and amendments thereto

22 (5) (2) Effective July 1, 2009, any full-time presiding officer in agen-
23 cies specified in subsection (h)(5) which conduct hearings pursuant to the
24 ~~Kansas administrative procedure act~~, except those exempted pursuant to
25 K.S.A. 77-551, and amendments thereto, and support personnel for such
26 presiding officers, shall be transferred to and shall become employees of
27 the office of administrative hearings. Such personnel shall retain all rights
28 under the state personnel system and retirement benefits under the laws
29 of this state which had accrued to or vested in such personnel prior to
30 the effective date of this section. Such person's services shall be deemed
31 to have been continuous. All transfers of personnel positions in the clas-
32 sified service under the Kansas civil service act shall be in accordance
33 with civil service laws and any rules and regulations adopted thereunder.
34 This section shall not affect any matter pending before an administrative
35 hearing officer at the time of the effective date of the transfer, and such
36 matter shall proceed as though no transfer of employment occurred.

adjudicative

, as defined in K.S.A. 77-502,
and amendments thereto

37 (j) *Except as provided in K.S.A. 77-551, and amendments thereto, the*
38 *provisions of this section shall not apply to the state board of tax appeals*
39 *and the state corporation commission.*

40 Sec. 3. [5.] K.S.A. 77-502 is hereby amended to read as follows: 77-
41 502. As used in this act:

42 (a) "State agency" means any officer, department, bureau, division,
43 board, authority, agency, commission or institution of this state, except

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1 the judicial and legislative branches of state government and political
2 subdivisions of the state, which is authorized by law to administer, enforce
3 or interpret any law of this state.

4 (b) "Agency head" means an individual or body of individuals in
5 whom the ultimate legal authority of the state agency is vested by any
6 provision of law.

7 (c) "License" means a franchise, permit, certification, approval, reg-
8 istration, charter or similar form of authorization required by law for a
9 person to engage in a profession or occupation.

10 (d) "Order" means a state agency action of particular applicability
11 that determines the legal rights, duties, privileges, immunities or other
12 legal interest of one or more specific persons.

13 (e) "Party to state agency proceedings," or "party" in context so in-
14 dicating, means:

- 15 (1) A person to whom an order is specifically directed; or
- 16 (2) a person named as a party to a state agency proceeding or allowed
17 to intervene as a party in the proceeding.

18 (f) "Person" means an individual, partnership, corporation, associa-
19 tion, political subdivision or unit thereof or public or private organization
20 or entity of any character, and includes another state agency.

21 (g) "Political subdivision" means political or taxing subdivisions of the
22 state, including boards, commissions, authorities, councils, committees,
23 subcommittees and other subordinate groups or administrative units
24 thereof, receiving or expending and supported in whole or in part by
25 public funds.

26 (h) "*Adjudicative hearing*" means any hearing or proceeding requir-
27 ing resolution of disputed facts to formulate and issue a decision or order.
28 Notwithstanding the use of any other term, if the hearing or proceeding
29 requires resolution of disputed facts it shall be deemed an adjudicative
30 hearing.

31 Sec. 4. [6.] K.S.A. 77-512 is hereby amended to read as follows: 77-
32 512. (a) A state agency may not revoke, suspend, modify, annul, withdraw,
33 refuse to renew, or amend a license unless the state agency first gives
34 notice and an opportunity for a hearing in accordance with this act. This
35 section does not preclude a state agency from ~~(a)~~ (1) taking immediate
36 action to protect the public interest in accordance with K.S.A. 77-536,
37 and amendments thereto, or ~~(b)~~ (2) adopting rules and regulations, oth-
38 erwise within the scope of its authority, pertaining to a class of licensees,
39 including rules and regulations affecting the existing licenses of a class of
40 licensees.

41 (b) *Unless otherwise provided by law, the burden of proof for dis-*
42 *puted issues of fact in occupational or professional licensing disciplinary*
43 *proceedings against an individual shall be by clear and convincing evi-*

, whether or not such hearing is
conducted in accordance with the
Kansas administrative procedure act

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1 dence.

2 Sec. 5. [7.] K.S.A. 2007 Supp. 77-514 is hereby amended to read as
3 follows: 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-~~
4 ~~37,121, and amendments thereto, the agency head, one or more members~~
5 ~~of the agency head or a presiding officer assigned by the office of admin-~~
6 ~~istrative hearings shall be the presiding officer. For all other agencies, the~~
7 ~~agency head, one or more members of the agency head, a presiding officer~~
8 ~~assigned by the office of administrative hearings, or, unless prohibited by~~
9 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~
10 ~~ignated by the agency head shall be the presiding officer. (a) (1) Not-~~
11 ~~withstanding any other provision of law to the contrary, on and after July~~
12 ~~1, 2008, through June 30, 2009, for agencies listed in subsections (h)(1),~~
13 ~~(h)(2), (h)(3) and (h)(4) of K.S.A. 75-37,121, and amendments thereto, a~~
14 ~~presiding officer assigned by the office of administrative hearings shall be~~
15 ~~the presiding officer for all adjudicative hearings. The presiding officer~~
16 ~~shall render an initial order, which becomes a final order unless reviewed~~
17 ~~in accordance with K.S.A. 77-527, and amendments thereto.~~

18 (2) *Notwithstanding any other provision of law to the contrary, except*
19 *as provided in K.S.A. 77-551, and amendments thereto, on and after July*
20 *1, 2009, for all state agencies, a presiding officer assigned by the office of*
21 *administrative hearings shall be the presiding officer for all adjudicative*
22 *hearings. The presiding officer shall render an initial order, which be-*
23 *comes a final order unless reviewed in accordance with K.S.A. 77-527,*
24 *and amendments thereto.*

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

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

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

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

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

43 (g) *Prior to July 1, 2009, as applicable, notwithstanding any quorum*

1 requirements, if the agency head of a professional or occupational li-
2 censing agency is a body of individuals, the agency head, unless prohibited
3 by law, may designate one or more members of the agency head to serve
4 as presiding officer and to render a final order in the proceeding.

5 *(h) Except as otherwise provided by law, in any proceeding under*
6 *this act, a person shall not be eligible to act as presiding officer, and shall*
7 *not provide confidential legal or technical advice to a presiding officer in*
8 *the proceeding, if such person:*

9 *(1) Has participated in any stage of an investigation or prosecution*
10 *associated with the proceeding or a proceeding arising out of the same*
11 *event or transaction;*

12 *(2) is supervised or directed by a person who would be disqualified*
13 *under paragraph (1); or*

14 *(3) has participated in an investigatory or prosecutorial capacity in*
15 *the creation of a summary order as part of another stage of the proceeding.*

16 Sec. ~~6.~~ [8.] K.S.A. 77-516 is hereby amended to read as follows: 77-
17 516. The presiding officer designated to conduct the hearing may conduct
18 a prehearing conference. If the conference is conducted:

19 (a) *Prior to July 1, 2009, as applicable, the state agency may assign a*
20 *presiding officer, if such agency is not required to use a presiding officer*
21 *from the office of administrative hearings, for the prehearing conference,*
22 *exercising the same discretion as is provided by K.S.A. 77-514, and*
23 *amendments thereto, concerning the selection of a presiding officer for*
24 *a hearing.*

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

29 (c) The notice shall include:

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

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

35 (3) the official file or other reference number, the name of the pro-
36 ceeding and a general description of the subject matter;

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

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

41 (6) the name, official title, mailing address and telephone number of
42 the presiding officer for the prehearing conference;

43 (7) a statement that at the prehearing conference the proceeding,

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1 without further notice, may be converted into a conference hearing or a
2 summary proceeding for disposition of the matter as provided by this act;
3 and

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

7 (d) The notice may include any other matters that the presiding of-
8 ficer considers desirable to expedite the proceedings.

9 Sec. 7- [9.] K.S.A. 77-525 is hereby amended to read as follows: 77-
10 525. (a) A presiding officer serving in an adjudicative proceeding may not
11 communicate, directly or indirectly, regarding any issue in the proceeding
12 while the proceeding is pending, with any party or participant, with any
13 person who has a direct or indirect interest in the outcome of the pro-
14 ceeding or with any person who *has served in an investigatory or pros-*
15 *ecutorial capacity* or presided at a previous stage of the proceeding, with-
16 out notice and opportunity for all parties to participate in the
17 communication.

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

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

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

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

33 (d) If, before serving as presiding officer in an adjudicative proceed-
34 ing, a person receives an *ex parte* communication of a type that could not
35 properly be received while serving, the person, promptly after starting to
36 serve, shall disclose the communication in the manner prescribed in sub-
37 section (e).

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

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

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

9 (g) The state agency shall, and any party may, report any willful vio-
10 lation of this section to appropriate authorities for any disciplinary pro-
11 ceedings provided by law. In addition, each state agency, by rule and
12 regulation, may provide for appropriate sanctions, including default, for
13 any violations of this section.

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

hearings or

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

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

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

24 Sec. 8: [10.] K.S.A. 77-526 is hereby amended to read as follows: 77-
25 526. (a) *Except as provided in K.S.A. 77-514, and amendments thereto*, if
26 the presiding officer is the agency head or designated in accordance with
27 subsection (g) of K.S.A. 77-514, and amendments thereto, the presiding
28 officer shall render a final order.

29 (b) *Except as provided in K.S.A. 77-514, and amendments thereto*, if
30 the presiding officer is neither the agency head nor designated in accord-
31 ance with subsection (g) of K.S.A. 77-514, and amendments thereto, the
32 presiding officer shall render an initial order, which becomes a final order
33 unless reviewed in accordance with K.S.A. 77-527 and amendments
34 thereto.

35 (c) A final order or initial order shall include, separately stated, find-
36 ings of fact, conclusions of law and policy reasons for the decision if it is
37 an exercise of the state agency's discretion, for all aspects of the order,
38 including the remedy prescribed and, if applicable, the action taken on a
39 petition for stay of effectiveness. Findings of fact, if set forth in language
40 that is no more than mere repetition or paraphrase of the relevant pro-
41 vision of law, shall be accompanied by a concise and explicit statement of
42 the underlying facts of record to support the findings. The order shall
43 also include a statement of the available procedures and time limits for

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1 seeking reconsideration, administrative review or other administrative re-
2 lief. An initial order shall include a statement of any circumstances under
3 which the initial order, without further notice, may become a final order.
4 If the presiding officer has been designated in accordance with subsection
5 (g) of K.S.A. 77-514, and amendments thereto, the final order shall so
6 state. Any final order, for which a petition for reconsideration is not a
7 prerequisite for seeking judicial review, and any initial order, for which
8 further administrative review is not available, shall state the agency officer
9 to receive service of a petition for judicial review on behalf of the agency.

10 (d) Findings of fact shall be based exclusively upon the evidence of
11 record in the adjudicative proceeding and on matters officially noticed in
12 that proceeding.

13 (e) If a substitute presiding officer is appointed pursuant to K.S.A.
14 77-514 and amendments thereto, the substitute presiding officer shall use
15 any existing record and may conduct any further proceedings appropriate
16 in the interests of justice.

17 (f) The presiding officer may allow the parties a designated amount
18 of time after conclusion of the hearing for the submission of proposed
19 findings.

20 (g) A final order or initial order pursuant to this section shall be ren-
21 dered in writing and served within 30 days after conclusion of the hearing
22 or after submission of proposed findings in accordance with subsection

23 (f) unless this period is waived or extended with the written consent of
24 all parties or for good cause shown. If extended for good cause, such good
25 cause shall be set forth in writing on or before expiration of the 30 days.

26 (h) The presiding officer shall cause copies of the order to be served
27 on each party and, if the order is an initial order, on the agency head in
28 the manner prescribed by K.S.A. 77-531 and amendments thereto.

29 (i) Notwithstanding the other provisions of this section, if the presid-
30 ing officer in a hearing before the state corporation commission is not
31 the agency head, the presiding officer shall not render an initial order but
32 shall make written findings and recommendations to the commission. The
33 commission shall render and serve a final order within 60 days after con-
34 clusion of the hearing or after submission of proposed findings in accord-
35 ance with subsection (f) unless this period is waived or extended with the
36 written consent of all parties or for good cause shown. If extended for
37 good cause, such good cause shall be set forth in writing on or before
38 expiration of the 60 days.

39 Sec. 9: [11.] K.S.A. 2007 Supp. 77-527 is hereby amended to read
40 as follows: 77-527. (a) The agency head, upon its own motion may, and
41 upon petition by any party or when required by law shall, review an initial
42 order, except to the extent that:

43 (1) A provision of law precludes or limits state agency review of the

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1 initial order; or

2 (2) the agency head (A) determines to review some but not all issues,
3 or not to exercise any review, (B) delegates its authority to review the
4 initial order to one or more persons, unless such delegation is expressly
5 prohibited by law, or (C) authorizes one or more persons to review the
6 initial order, subject to further review by the agency head.

7 (b) A petition for review of an initial order must be filed with the
8 agency head, or with any person designated for this purpose by rule and
9 regulation of the state agency, within 15 days after service of the initial
10 order. If the agency head on its own motion decides to review an initial
11 order, the agency head shall give written notice of its intention to review
12 the initial order within 15 days after its service. If the agency head de-
13 termines not to review an initial order in response to a petition for review,
14 the agency head shall, within 20 days after filing of the petition for review,
15 serve on each party an order stating that review will not be exercised.

16 (c) The petition for review shall state its basis. If the agency head on
17 its own motion gives notice of its intent to review an initial order, the
18 agency head shall identify the issues that it intends to review.

19 (d) In reviewing an initial order, the agency head or designee shall
20 exercise all the decision-making power that the agency head or designee
21 would have had to render a final order had the agency head or designee
22 presided over the hearing, except to the extent that the issues subject to
23 review are limited by a provision of law or by the agency head or designee
24 upon notice to all parties. *In reviewing findings of fact in initial orders*
25 *by presiding officers, the agency head shall give due regard to the presid-*
26 *ing officer's opportunity to observe the witnesses. The agency head shall*
27 *consider the agency record or such portions of it as have been designated*
28 *by the parties.*

29 (e) The agency head or designee shall afford each party an opportu-
30 nity to present briefs and may afford each party an opportunity to present
31 oral argument.

32 (f) The agency head or designee shall render a final order disposing
33 of the proceeding or remand the matter for further proceedings with
34 instructions to the person who rendered the initial order. Upon remand-
35 ing a matter, the agency head or designee may order such temporary
36 relief as is authorized and appropriate.

37 (g) A final order or an order remanding the matter for further pro-
38 ceedings shall be rendered in writing and served within 30 days after
39 receipt of briefs and oral argument unless that period is waived or ex-
40 tended with the written consent of all parties or for good cause shown.

41 (h) A final order or an order remanding the matter for further pro-
42 ceedings under this section shall identify any difference between this
43 order and the initial order and shall state the facts of record which support

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1 any difference in findings of fact, state the source of law which supports
2 any difference in legal conclusions, and state the policy reasons which
3 support any difference in the exercise of discretion. A final order under
4 this section shall include, or incorporate by express reference to the initial
5 order, all the matters required by subsection (c) of K.S.A. 77-526, and
6 amendments thereto.

7 (i) The agency head shall cause copies of the final order or order
8 remanding the matter for further proceedings to be served on each party
9 in the manner prescribed by K.S.A. 77-531, and amendments thereto.

10 (j) Unless a petition for reconsideration is a prerequisite for seeking
11 judicial review, a final order under this section shall state the agency
12 officer to receive service of a petition for judicial review on behalf of the
13 agency.

14 ~~Sec. 10. [12.]~~ K.S.A. 2007 Supp. 77-551 is hereby amended to read
15 as follows: 77-551. (a) ~~Except as provided in subsection (b), in all hearings~~
16 ~~of any state agency specified in subsection (h) of K.S.A. 75-37,121, and~~
17 ~~amendments thereto, that are required to be conducted in accordance~~
18 ~~with the provisions of the Kansas administrative procedure act, the pre-~~
19 ~~siding officer shall be the agency head, one or more members of the~~
20 ~~agency head or a presiding officer assigned by the office of administrative~~
21 ~~hearings. (a) (1) Notwithstanding any other provision of law to the con-~~
22 ~~trary, except as provided in subsection (b), on and after July 1, 2008,~~
23 ~~through June 30, 2009, in all adjudicative hearings of any state agency~~
24 ~~specified in subsections (h)(1), (h)(2), (h)(3) and (h)(4) of K.S.A. 75-~~
25 ~~37,121, and amendments thereto, that are required to be conducted in~~
26 ~~accordance with the provisions of the Kansas administrative procedure~~
27 ~~act, the presiding officer shall be a presiding officer assigned by the office~~
28 ~~of administrative hearings.~~

← Delete

29 (2) ~~Notwithstanding any other provision of law to the contrary, except~~
30 ~~as provided in subsection (b), on and after July 1, 2009, in all adjudicative~~
31 ~~hearings of any state agency that are required to be conducted in accord-~~
32 ~~ance with the provisions of the Kansas administrative procedure act, the~~
33 ~~presiding officer shall be a presiding officer assigned by the office of ad-~~
34 ~~ministrative hearings.~~

← Delete

35 (b) (1) The provisions of this section shall not apply to the employ-
36 ment security law, pursuant to K.S.A. 44-701 et seq., and amendments
37 thereto, or article 5 of chapter 44, and amendments thereto, except K.S.A.
38 44-532 and 44-5,120, and amendments thereto, concerning the workers
39 compensation act.

40 (2) ~~Notwithstanding any other provision of law to the contrary, in all~~
41 ~~hearings of the state board of tax appeals and the state corporation com-~~
42 ~~mission that are required to be conducted in accordance with the provi-~~
43 ~~sions of the Kansas administrative procedure act, the presiding officer~~

← adjudicative

← Delete

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1 *shall be the agency head or one or more members of the agency head. If*
2 *the agency head or one or more members of the agency head is not the*
3 *presiding officer, an officer assigned by the office of administrative hear-*
4 *ings shall serve as the presiding officer.*

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

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

14 Sec. ~~11.~~ [13.] K.S.A. 77-620 is hereby amended to read as follows:
15 77-620. (a) Within 30 days after service of the petition for judicial review,
16 or within further time allowed by the court or by other provision of law,
17 the agency shall transmit to the court the original or a certified copy of
18 the agency record for judicial review of the agency action, consisting of
19 any agency documents expressing the agency action; other documents
20 identified by the agency as having been considered by it before its action
21 and used as a basis for its action; *any materials concerning a hearing*
22 *conducted by, or initial order issued by, the office of administrative hear-*
23 *ings related to the agency action;* and any other material required by law
24 as the agency record for the type of agency action at issue, subject to the
25 provisions of this section.

26 (b) If part of the record has been preserved without a transcript, the
27 agency shall prepare a transcript for inclusion in the record transmitted
28 to the court, except for portions that the parties stipulate to omit in ac-
29 cordance with subsection (c). Unless otherwise ordered by the court, the
30 cost of the preparation of the transcript shall be paid by the appellant.

31 (c) By stipulation of all parties to the judicial review proceedings, the
32 record may be shortened, summarized or organized.

33 (d) The court may tax the cost of preparing transcripts and copies for
34 the record against a party who unreasonably refuses to stipulate to
35 shorten, summarize or organize the record.

36 (e) Additions to the record pursuant to K.S.A. 77-619, *and amend-*
37 *ments thereto,* shall be made as ordered by the court.

38 (f) The court may require or permit subsequent corrections or ad-
39 ditions to the record.

40 Sec. ~~12.~~ [14.] K.S.A. 77-621 is hereby amended to read as follows:
41 77-621. (a) Except to the extent that this act or another statute provides
42 otherwise:

43 (1) The burden of proving the invalidity of agency action is on the

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1 party asserting invalidity; and
 2 (2) the validity of agency action shall be determined in accordance
 3 with the standards of judicial review provided in this section, as applied
 4 to the agency action at the time it was taken.
 5 (b) The court shall make a separate and distinct ruling on each ma-
 6 terial issue on which the court's decision is based.
 7 (c) The court shall grant relief only if it determines any one or more
 8 of the following:
 9 (1) The agency action, or the statute or rule and regulation on which
 10 the agency action is based, is unconstitutional on its face or as applied;
 11 (2) the agency has acted beyond the jurisdiction conferred by any
 12 provision of law;
 13 (3) the agency has not decided an issue requiring resolution;
 14 (4) the agency has erroneously interpreted or applied the law;
 15 (5) the agency has engaged in an unlawful procedure or has failed to
 16 follow prescribed procedure;
 17 (6) the persons taking the agency action were improperly constituted
 18 as a decision-making body or subject to disqualification;
 19 (7) the agency action is based on a determination of fact, made or
 20 implied by the agency, that is not supported by evidence that is substantial
 21 when viewed in light of the record as a whole, which includes the agency
 22 record for judicial review, supplemented by any additional evidence re-
 23 ceived by the court under this act; or
 24 (8) the agency action is otherwise unreasonable, arbitrary or
 25 capricious.
 26 (d) *For purposes of this section, "in light of the record as a whole"*
 27 *means that the adequacy of the evidence in the record before the court to*
 28 *support a particular finding of fact shall be judged in light of all the*
 29 *relevant evidence in the record cited by any party that detracts from such*
 30 *finding as well as all of the relevant evidence in the record, compiled*
 31 *pursuant to K.S.A. 77-620, and amendments thereto, cited by any party*
 32 *that supports such finding, including any determinations of veracity by*
 33 *the presiding officer who personally observed the demeanor of the witness*
 34 *and the agency's explanation of why the relevant evidence in the record*
 35 *supports its material findings of fact.*
 36 (e) In making the foregoing determinations, due account shall be
 37 taken by the court of the rule of harmless error. ←
 38 Sec. ~~13~~. [15.] On and after July 1, 2009, K.S.A. 77-551, as amended
 39 by section 43 of chapter 145 of the 2004 Session Laws of Kansas, and
 40 K.S.A. 2003 Supp. 77-514, as amended by section 39 of chapter 145 of
 41 the 2004 Session Laws of Kansas are hereby repealed.
 42 Sec. ~~14~~. [16.] K.S.A. 77-502, 77-512, 77-516, 77-525, 77-526, [77-
 43 619,] 77-620 and 77-621 and K.S.A. 2007 Supp. 74-599, 75-37, 121, 77-

Insert Sec. 15. Amending K.S.A. 82a-1037 (attached).
 And renumber remaining sections accordingly.

and 82a-1037

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Sec. **15**. K.S.A. 82a-1037 is hereby amended to read as follows: 82a-1037. (a) In any case where proceedings for the designation of an intensive groundwater use control area are initiated, the chief engineer shall hold and conduct a public hearing on the question of designating such an area as an intensive groundwater use control area. Written notice of the hearing shall be given to every person holding a water right in the area in question and notice of the hearing shall be given by one publication in a newspaper or newspapers of general circulation within the area in question at least ~~thirty-(30)~~ 30 days prior to the date set for such hearing. The notice shall state the question and shall denote the time and place of the hearing. At the hearing, documentary and oral evidence shall be taken, and a full and complete record of the same shall be kept.

(b) Such hearing shall be considered an adjudicative hearing, as defined in K.S.A. 77-502, and amendments thereto.

1 provided by the state within the scope of their contractual duties.
2 Any such agent shall not be indemnified or held harmless by the
3 state in any cause of action arising out of such agent's intentional
4 or negligent acts.

5 Sec. 2: [3.] K.S.A. 20-3205 is hereby amended to read as follows: 20-
6 3205. ~~On and after July 1, 2006;~~ (a) The surveys of court users, survey
7 results and judicial performance evaluation results are confidential and
8 shall not be disclosed except [as provided in subsection (d) or] in ac-
9 cordance with the rules of the commission or the Kansas supreme court.

10 (b) Any statute or rule that restricts public access to certain types of
11 court records or certain types of information contained in court records
12 shall not prohibit the commission or agents of the commission from having
13 access to the names and addresses of appropriate persons named
14 in such records ~~[in the discharge of the commission's duties pursuant to~~
15 ~~article 32 of chapter 20 of the Kansas Statutes Annotated, and amend-~~
16 ~~ments thereto. No confidential information found in such court records~~
17 ~~shall be revealed to any other person by the commission or agents of the~~
18 ~~commission.~~

Strike
and other information
necessary for

19 (c) The evaluation of judges subject to political elections shall be used
20 solely for self-improvement. A judge subject to political elections shall
21 not reveal data from any portion of the survey or the results of the survey.

22 [(d) Judicial performance evaluation results of a retirant serv-
23 ing as a judge under written agreement with the Kansas supreme
24 court pursuant to K.S.A. 20-2622, and amendments thereto, shall
25 be public and shall be used by the Kansas supreme court for the
26 determination of a continuing agreement pursuant to K.S.A. 20-
27 2622, and amendments thereto.]

28 Sec. 3: [4.] K.S.A. 20-3206 is hereby amended to read as follows: 20-
29 3206. ~~On and after July 1, 2006;~~ Upon certification by the commission to
30 the judicial council that: (a) Funding is not adequate to support a judicial
31 evaluation program of high quality; (b) the Kansas supreme court has
32 failed to ~~adopt~~ approve appropriate rules as set forth in this act; or (c) in
33 the opinion of the commission the program is no longer of appropriate
34 value, then the program may be reduced in scope or discontinued as
35 determined by the judicial council.

36 Sec. 4: [5.] K.S.A. 25-4169a is hereby amended to read as follows:
37 25-4169a. (a) No officer or employee of the state of Kansas, any county,
38 any unified school district having 35,000 or more pupils regularly en-
39 rolled, any city of the first class or the board of public utilities of the city
40 of Kansas City, Kansas, shall use or authorize the use of public funds or
41 public vehicles, machinery, equipment or supplies of any such govern-
42 mental agency or the time of any officer or employee of any such gov-
43 ernmental agency, for which the officer or employee is compensated by