

Approved: 4/1/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 17, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Bob Brookens- excused
Representative Kevin Yoder- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

The hearing on **SB 215 - Non-gubernatorial appointments subject to confirmation; procedure** was opened.

Theresa Kiernan, Office of the Revisor of Statutes gave a review of the bill. This bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Derek Schmidt who serves as the Chairperson of the Senate Confirmation Oversight Committee. She explained prior to the creation of the Biosciences Authority in 2004, nearly all of the positions which were subject to Senate confirmation were appointed by the governor. Since 2004, there have been many entities created whose members are subject to confirmation and who are appointed by legislators. In 2008, **SB 21** was enacted to fill the gaps that existed in the confirmation process of non-gubernatorial appointments. During the 2008 interim, it was discovered that a couple of the issues needed to be addressed further. Those issues are addressed in this bill as follows:

- The KBI would be required to conduct a background investigation on all appointees to positions which are subject to confirmation by the Senate. Current law only requires the KBI to do a background check at the direction of the Governor.
- The bill would allow information received from the KBI to be disclosed to the Governor's staff if the appointing authority is the Governor.
- Under current law a person may not be appointed to a position which is subject to confirmation unless the person is current in the payment of taxes and consents to the release of tax information. This bill would amend K.S.A. 75-4315d to provide that an appointee would consent to the release of a tax certification by the Kansas Department of Revenue that the person is, or is not, current in the payment of taxes. Currently, the actual tax information is required to be released.
- This bill would clarify that only the information received from KDOR and the KBI, except conviction data, would be confidential. The confidential information may be released only to the appointee, the appointing authority, the chairperson and vice-chairperson of the Confirmation Oversight Committee.
- this bill also makes a correction in the reference to the Ranking Minority Member of the Confirmation Oversight Committee. The Minority Leader of the Senate serves as the Vice Chairperson of the Committee.

She also attached a suggested technical amendment to the bill. (Attachment 1)

No conferees testified.

The hearing on **SB 215** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 17, 2009, in Room 143-N of the Capitol.

SB 8 - Kansas tort claims act; medical students enrolled at University of Kansas Medical Center.

Senior Assistant Revisor, Jill Wolters gave a briefing on the bill. (Attachment 2)

Representative Ward made the motion to report SB 8 favorably for passage.
Representative King seconded the motion. Motion carried.

Committee members expressed their concerns of adding others such as foster care, etc. to this bill and recommended separate legislation be pursued for next session.

SB 45 - Kansas power of attorney act amendments. SB 44 - Kansas false claims act.

Representative Crow made the motion to report SB 45 favorably for passage.
Representative Keuther seconded the motion.

Representative Crow made a substitute motion to amend the bill (Balloon 1, page 1) to add to Page 1, Section 1 (3), Line 35 “expressed in the presence of a notary public”. (Attachment 3)
Representative King seconded the motion. Motion carried.

Representative Watkins made the motion to add (Balloon 1, page 3) “nor shall the attorney in fact place the attorney in fact’s name as an owner on any of the accounts”, Page 3, Line 2. (see Attachment 3)
Representative Whitham seconded the motion.
With permission of the second, Representative Watkins withdrew his motion.

Representative Watkins made the motion to report SB 45 favorably for passage as amended.
Representative Kuether seconded the motion. Motion carried.

SB 44 - Kansas false claims act.

Representative Goyle made the motion to report SB 44 favorably for passage.
Representative Crow seconded the motion.

Representative Whitham made the substitute motion to amend the bill with technical amendments to page 3, Line 14 (d) to strike “made under the state revenue and taxation code” and add “related to state taxation law made pursuant to chapter 79 of the Kansas Statutes Annotated, and amendments thereto”, (Balloon text44ball).
(Attachment 4)
Representative Patton seconded the motion.

Chairman Kinzer made the motion to amend the bill to add to Page 3, Section 3, Line 13 “An innocent mistake shall be a defense to an action under this act” (Balloon 3). (Attachment 5)
Representative Ward seconded the motion. Motion carried.

In discussion, Chairman Kinzer advised that Florida added this language to their false claims act. He also provided the committee with another option of striking Page 3, Section 3, Line 12 (c) “In a civil action brought pursuant to subsection (a), proof of specific intent to defraud is not required,” (Balloon 4) (Attachment 6). The committee supported the Chairman’s motion over this option.

Representative Patton made the motion to amend the bill on Page 3, Section 5(a), Line 32 to strike the word “committed” and add the word “discovered”, (Balloon 2). (Attachment 7).
Representative King seconded the motion.
With permission of the second , Representative Patton changed the word from “discovered” to “discovered or reasonably should have been discovered”.
A show of hands showed nine yes votes. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 17, 2009, in Room 143-N of the Capitol.

Chairman Kinzer made the motion to amend the bill on Page 3, Section 5(c), Line 38 to strike “a preponderance of the” and add “clear and convincing”, (Balloon 5). (Attachment 8).

Representative Ward seconded the motion.

Representative Kleeb moved the motion to amend the bill to “Clear and convincing”

Representative Watkins seconded the motion

Motion fails.

Representative Kuether made the motion to report SB 44 favorably for passage as amended.

Representative Whitham seconded the motion. Motion carried.

SB 87 - Agencies; disclosure of certain records; administrative procedure; judicial review.

Melissa Doebelin, Staff Revisor, gave an overview of the bill.

Representative Whitham made the motion to report SB 87 favorably for passage.

Representative Crow seconded the motion.

Representative Pauls made the substitute motion to amend the bill, Page 7, (47) Line 25 to add the word “abuse”, as shown in Balloon 1. (Attachment 9)

Representative Colloton seconded the motion.

Motion carried.k

Representative Whitham made the motion to amend the bill, Page 10, Section 8, Line 24, to strike the word “the”, and add “For all agencies, except for the state court of tax appeals, the”, as shown in Balloon 3. (Attachment 10)

Representative King seconded the motion. Motion carried.

Representative Patton made the motion to amend the bill, Page 10, Section 6 (b), Line 9, to add “The burden of proof provided in this subsection shall not apply to standard of care cases conducted by the board of healing arts”.

Representative Jack seconded the motion. Motion carried.

Representative Pauls made the motion to strike Section 20, (3) (A) thru (E), Lines 18 through 29, page 19.

Representative Crow seconded the motion. Motion carried.

Representative Colloton made the motion to add “and to determine the credibility of witnesses” on Section 14, (d), line 6 on page 16.

Representative Talia seconded the motion. Motion carried.

Representative Pauls made the motion to report SB 87 favorably for passage as amended.

Representative Colloton seconded the motion.

Motion carried.

The next meeting is scheduled for March 18, 2009.

The meeting was adjourned at 5:20 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 3-17-09

NAME	REPRESENTING
Joe Evers	KANSA
Loren Snell	KSAG
Julia Mowers	KS BHA
Jack Conroy	KS BHA
Richard Hammer	KPA
Gail Bright	Office of the Securities Commissioner
Ed Kump	KACP KPO
Joseph Melin	KS BAR ASSN
Sean Milice	CAPITAL STRATEGIES
Doug Smith	Pruitt, Smith & Associates

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

TO: House Committee on Judiciary
FROM: Theresa Kiernan, Senior Assistant Revisor of Statutes
RE: Senate Bill No. 215
DATE: March 16, 2009

SB 215 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Derek Schmidt who serves as the Chairperson of the Senate Confirmation Oversight Committee. The bill would make several amendments to a provision of law that was enacted in 2008 SB 21. SB 21 concerned the process for the submission of non-gubernatorial appointments to the confirmation process.

Prior to the creation of the Biosciences Authority in 2004 nearly all of the positions which were subject to senate confirmation were appointed by the governor. Since 2004, there have been many entities created whose members are subject to confirmation and who are appointed by legislators. 2008 SB 21 was enacted to fill the gaps that existed in the confirmation process of non-gubernatorial appointments. During the 2008 interim, it was discovered that a couple of the issues needed to be addressed further. Those issues are addressed in SB 215.

SB 215 would amend K.S.A. 75-712 to require the Kansas Bureau of Investigation (KBI) to conduct a background investigation on all appointees to positions which are subject to confirmation by the Senate upon the request of the appointing authority. Information received through the investigation is confidential and may be disclosed only to the appointing authority or as provided under K.S.A. 75-4315d. If the governor is the appointing authority, the information also may disclosed to certain members of the governor's staff

Under current law a person may not be appointed to a position which is subject to confirmation unless the person is current in the payment of taxes and consents to the release of tax information. SB 215 would amend K.S.A. 75-4315d to provide that an appointee would consent to the release of a tax certification by the Kansas Department of Revenue (KDOR) that the person is, or is not, current in the payment of taxes. Currently, the actual tax information is required to be released.

The KBI background check, tax information, the Statement of Substantial Interest and the nomination form of the appointee is kept on file in a secure location in the office of the director of the Legislative Research Department. Under current law, the language concerning the confidentiality and release of this information is inconsistent. SB 215 would clarify that the only the information received from KDOR and the KBI, except conviction data, would be confidential. The confidential information may be released only to the appointee, the appointing authority, the chairperson and vice-chairperson of the Confirmation Oversight Committee.

SB 215 also makes a correction in the reference to the Ranking Minority Member of the Confirmation Oversight Committee. The Minority Leader of the Senate serves as the Vice Chairperson of the Committee.

According to the fiscal note, the KBI stated that SB 215 would have no fiscal effect on the agency and that any additional expenditures related to conducting the background investigations would be offset by record check fees. KDOR also stated that the bill would have no fiscal effect on the department.

Attached is a copy of a suggested technical amendment to the bill.

SENATE BILL No. 215

By Committee on Federal and State Affairs

2-5

9 AN ACT concerning certain boards, commissions and officers; relating
10 to the appointment thereof; amending K.S.A. 2008 Supp. 75-712 and
11 75-4315d and repealing the existing sections.

12

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

14 Section 1. K.S.A. 2008 Supp. 75-712 is hereby amended to read as
15 follows: 75-712. (a) It is the duty of the members of the bureau to make
16 full and complete investigations at the direction of the attorney general.
17 Each member of the bureau shall possess all powers and privileges which
18 are now or may be hereafter given to the sheriffs of Kansas.

19 (b) The bureau shall acquire, collect, classify and preserve criminal
20 identification and other crime records, and may exchange such criminal
21 identification records with the duly authorized officials of governmental
22 agencies, of states, cities and penal institutions.

23 (c) For purposes of carrying out the powers and duties of the bureau,
24 the director may request and accept grants or donations from any person,
25 firm, association or corporation or from the federal government or any
26 federal agency and may enter into contracts or other transactions with
27 any federal agency in connection therewith.

28 (d) ~~The bureau, at the direction of the governor, shall conduct back-~~
29 ~~ground investigations of: (1) Appointees to positions which are subject to~~
30 ~~confirmation by the senate of the state of Kansas and; and (2) at the~~
31 ~~direction of the governor, all judicial appointments. The bureau shall re-~~
32 ~~quire the appointee to be fingerprinted. The fingerprints shall be sub-~~
33 ~~mitted to the bureau and to the federal bureau of investigation for the~~
34 ~~identification of the appointee and to obtain criminal history record in-~~
35 ~~formation, including arrest and nonconviction data. Background reports~~
36 ~~may include criminal intelligence information and information relating to~~
37 ~~criminal and background investigations. Except as provided by this sub-~~
38 ~~section, information received pursuant to this subsection shall be confi-~~
39 ~~dential and shall not be disclosed except to the appointing authority or~~
40 ~~members of the appointing authority's. If the appointing authority is the~~
41 ~~governor, information received pursuant to this subsection also may be~~
42 ~~disclosed to the governor's staff as necessary to determine the appointee's~~
43 ~~qualifications or as provided by K.S.A. 2008 Supp. 75-4315d, and amend~~

or as provided by K.S.A. 2008 Supp. 75-4315d, and amendments thereto.

1-2

1 ~~ments thereto.~~

2 (e) Reports of all investigations made by the members of the bureau
3 shall be made to the attorney general of Kansas.

4 Sec. 2. K.S.A. 2008 Supp. 75-4315d is hereby amended to read as
5 follows: 75-4315d. (a) As used in this section:

6 (1) "Office" means any state office or board, commission, council,
7 committee, authority or other governmental body the members of which
8 are required by law to be appointed by an appointing authority, and which
9 appointment is subject to confirmation by the senate as provided in K.S.A.
10 75-4315b, and amendments thereto.

11 (2) "Appointing authority" means a person, other than the governor,
12 who is required by law to make an appointment to an office.

13 (3) "Chairperson" means the chairperson of the confirmation over-
14 sight committee.

15 (4) "Committee" means the confirmation oversight committee estab-
16 lished by K.S.A. 46-2601, and amendments thereto.

17 (5) "Director" means the director of the Kansas legislative research
18 department or the director's designee.

19 (b) No person may be appointed to an office unless such person has
20 completed and submitted a nomination form as required by the rules of
21 the committee. No person may be appointed to an office unless such
22 person has filed a statement of substantial interest as required by K.S.A.
23 46-247, and amendments thereto. A copy of the nomination form and the
24 statement of substantial interest shall be kept on file in the office of the
25 director and shall be subject to disclosure under the Kansas open records
26 act.

27 (c) No person may be appointed to an office unless such person has
28 consented to a background investigation conducted by the Kansas bureau
29 of investigation. No person may be appointed to an office unless such
30 person ~~consents to the release of tax information by the Kansas depart-~~
31 ~~ment of revenue and the federal internal revenue service to determine if~~
32 *is current in the payment of taxes and consents to the release of a tax*
33 *certification by the Kansas department of revenue which states whether*
34 *such person is, or is not, current in the payment of taxes.*

35 (d) Any appointing authority who desires to appoint a person to an
36 office shall forward to the chairperson a completed copy of the nomina-
37 tion form, the statement of substantial interest, the consent to the release
38 of ~~tax information~~ *the tax certification* and a written request that a back-
39 ground investigation be conducted on the person nominated for appoint-
40 ment to an office. Upon receipt of such information, the chairperson shall
41 forward such information and a written direction to the director to re-
42 quest the Kansas bureau of investigation to conduct a background inves-
43 tigation of such nominee and to request the Kansas department of rev-

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MEMORANDUM

To: Representative Kinzer, Chairman, and Members of the House Judiciary Committee

From: Jill Wolters, Senior Assistant Revisor

Date: March 9, 2009

Subject: Kansas Tort Claims Act, enacted in 1979

Under the Kansas Tort Claims Act, a government entity can be held liable for damages caused by an employee's acts or omissions. K.S.A. 75-6103 states that each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment. K.S.A. 75-6102 defines "government entity" and "employee."

Certain actions by employees do not subject the governmental entity to liability, such as legislative functions, judicial functions, discretionary functions, the collection of taxes. (K.S.A. 75-6104)

The maximum claim for liability is \$500,000 for any number of claims arising out of a single occurrence or accident, unless the state has purchased an insurance policy in excess of the maximum. (K.S.A. 75-6105 and 75-6111) The governmental entity is required to provide the defense for such employee. (K.S.A. 75-6108)

The Act traditionally covers employees of a governmental entity. Through the years, the Legislature has added other persons who are not employees of a governmental entity, but perform a function for the governmental entity. An example would be a person who is an employee or volunteer of a nonprofit program which contracts with the juvenile justice authority (JJA). (This amendment was adopted in 1997.) The program would be required to contract with JJA or with another nonprofit program that has contracted with JJA to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through liability insurance of the nonprofit program. Further, the amendment amended K.S.A. 75-

House Judiciary

Date 3-17-09

Attachment # 2

governmental entity is not liable for damages resulting from any claim from providing a juvenile justice program to juvenile offenders, if such juvenile justice program has contracted with JJA or with another nonprofit program that has contracted with the JJA.

Regarding claims arising from the rendering of or failure to render professional services by a health care provider, the following persons and entities are covered under the tort claims act:

- (1) A charitable health care provider;
- (2) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; or
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226.

K.S.A. 75-6117 creates the tort claims fund in the state treasury, administered by the attorney general. Moneys in the fund may be expended only for settlements and final judgments arising out of claims and the costs of defending the claims.

Senate Bill 8 amends the definition of employee found in K.S.A. 75-6102, to include medical students enrolled at the University of Kansas Medical Center that are in clinical training at the University of Kansas Medical Center or at other health care institutions. Including University of Kansas Medical students involved in clinical work in the definition of employee means that the State of Kansas can be held liable for that student's act or failure to act, if that student was acting within the scope of his or her employment. The State of Kansas will provide a defense and indemnification for any claims arising out of these students' clinical training. The provisions of this amendment are retroactive to July 1, 2008. This language has been in a proviso in appropriation acts for over twenty years. It was deleted from the appropriations bills last year and placed into 2008 SB 700, then was amended into Senate Substitute for HB 2421. The bill passed the Senate, but died in conference committee.

SENATE BILL No. 45

By Committee on Judiciary

1-16

Balloon 1

House Judiciary
Date 3-17-09
Attachment # 3

10 AN ACT concerning the Kansas power of attorney act; amending K.S.A.
11 58-652, 58-656 and 58-657 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 58-652 is hereby amended to read as follows: 58-
15 652. (a) The authority granted by a principal to an attorney in fact in a
16 written power of attorney is not terminated in the event the principal
17 becomes wholly or partially disabled or in the event of later uncertainty
18 as to whether the principal is dead or alive if:

19 (1) The power of attorney is denominated a “durable power of
20 attorney;”

21 (2) the power of attorney includes a provision that states in substance
22 one of the following:

23 (A) “This is a durable power of attorney and the authority of my
24 attorney in fact shall not terminate if I become disabled or in the event
25 of later uncertainty as to whether I am dead or alive”; or

26 (B) “This is a durable power of attorney and the authority of my
27 attorney in fact, when effective, shall not terminate or be void or voidable
28 if I am or become disabled or in the event of later uncertainty as to
29 whether I am dead or alive”; and

30 (3) the power of attorney is signed by the principal, and dated and
31 acknowledged in the manner prescribed by K.S.A. 53-501 et seq., and
32 amendments thereto. *If the principal is physically unable to sign the*
33 *power of attorney but otherwise competent and conscious, the power of*
34 *attorney may be signed by an adult designee of the principal in the pres-*
35 *ence of the principal and at the specific direction of the principal. The*
36 *designee shall sign the principal’s name to the power of attorney in the*
37 *presence of a notary public, following which the document shall be ac-*
38 *knowledged in the manner prescribed by K.S.A. 53-501 et seq., and*
39 *amendments thereto, to the same extent and effect as if physically signed*
40 *by the principal.*

41 (b) All acts done by an attorney in fact pursuant to a durable power
42 of attorney shall inure to the benefit of and bind the principal and the
43 principal’s successors in interest, notwithstanding any disability of the

verbal

No

expressed in the presence of a notary public

yes

3-2

1 principal.

2 (c) (1) A power of attorney does not have to be recorded to be valid
3 and binding between the principal and attorney in fact or between the
4 principal and third persons.

5 (2) A power of attorney may be recorded in the same manner as a
6 conveyance of land is recorded. A certified copy of a recorded power of
7 attorney may be admitted into evidence.

8 (3) If a power of attorney is recorded any revocation of that power
9 of attorney must be recorded in the same manner for the revocation to
10 be effective. If a power of attorney is not recorded it may be revoked by
11 a recorded revocation or in any other appropriate manner.

12 (4) If a power of attorney requires notice of revocation be given to
13 named persons, those persons may continue to rely on the authority set
14 forth in the power of attorney until such notice is received.

15 (d) A person who is appointed an attorney in fact under a durable
16 power of attorney has no duty to exercise the authority conferred in the
17 power of attorney, unless the attorney in fact has agreed expressly in
18 writing to act for the principal in such circumstances. An agreement to
19 act on behalf of the principal is enforceable against the attorney in fact
20 as a fiduciary without regard to whether there is any consideration to
21 support a contractual obligation to do so. Acting for the principal in one
22 or more transactions does not obligate an attorney in fact to act for the
23 principal in subsequent transactions.

24 (e) The grant of power or authority conferred by a power of attorney
25 in which any principal shall vest any power or authority in an attorney in
26 fact, if such writing expressly so provides, shall be effective only upon:
27 (1) A specified future date; (2) the occurrence of a specified future event;
28 or (3) the existence of a specified condition which may occur in the future.
29 In the absence of actual knowledge to the contrary, any person to whom
30 such writing is presented shall be entitled to rely on an affidavit, executed
31 by the attorney in fact, setting forth that such event has occurred or
32 condition exists.

33 Sec. 2. K.S.A. 58-656 is hereby amended to read as follows: 58-656.

34 (a) An attorney in fact who elects to act under a power of attorney is
35 under a duty to act in the interest of the principal and to avoid conflicts
36 of interest that impair the ability of the attorney in fact so to act. A person
37 who is appointed an attorney in fact under a power of attorney who un-
38 dertakes to exercise the authority conferred in the power of attorney, has
39 a fiduciary obligation to exercise the powers conferred in the best interests
40 of the principal, and to avoid self-dealing and conflicts of interest, as in
41 the case of a trustee with respect to the trustee's beneficiary or benefi-
42 ciaries. *The attorney in fact shall keep a record of all receipts, disburse-*
43 *ments and transactions made on behalf of the principal and shall not*

No

income received

1 *comingle funds or assets of the principal with the funds or assets of the*
2 *attorney in fact.* In the absence of explicit authorization, the attorney in
3 fact shall exercise a high degree of care in maintaining, without modifi-
4 cation, any estate plan which the principal may have in place, including,
5 but not limited to, arrangements made by the principal for disposition of
6 assets at death through beneficiary designations, ownership by joint ten-
7 ancy or tenancy by the entirety, trust arrangements or by will or codicil.
8 Unless otherwise provided in the power of attorney or in a separate agree-
9 ment between the principal and attorney in fact, an attorney in fact who
10 elects to act shall exercise the authority granted in a power of attorney
11 with that degree of care that would be observed by a prudent person
12 dealing with the property and conducting the affairs of another, except
13 that all investments made on or after July 1, 2003, shall be in accordance
14 with the provisions of the Kansas uniform prudent investor act, K.S.A.
15 58-24a01 *et seq.*, and amendments thereto. If the attorney in fact has
16 special skills or was appointed attorney in fact on the basis of represen-
17 tations of special skills or expertise, the attorney in fact has a duty to use
18 those skills in the principal's behalf.

19 (b) On matters undertaken or to be undertaken in the principal's
20 behalf and to the extent reasonably possible under the circumstances, an
21 attorney in fact has a duty to keep in regular contact with the principal,
22 to communicate with the principal and to obtain and follow the instruc-
23 tions of the principal.

24 (c) If, following execution of a durable power of attorney, a court of
25 the principal's domicile appoints a conservator, guardian of the estate or
26 other fiduciary charged with the management of all of the principal's
27 property or all of the principal's property except specified exclusions, the
28 attorney in fact is accountable to the fiduciary as well as to the principal.
29 The fiduciary has the same power to revoke or amend the durable power
30 of attorney that the principal would have had if the principal were not an
31 adult with an impairment in need of a guardian or conservator or both as
32 defined by subsection (a) of K.S.A. 59-3051, and amendments thereto.

33 (d) A principal may nominate by a power of attorney, a guardian or
34 conservator, or both, for consideration by the court. If a petition to ap-
35 point a guardian or conservator, or both, is filed, the court shall make the
36 appointment in accordance with the principal's most recent nomination
37 in the power of attorney, so long as the individual nominated is a fit and
38 proper person.

39 (e) An attorney in fact shall exercise authority granted by the principal
40 in accordance with the instrument setting forth the power of attorney,
41 any modification made therein by the principal or the principal's legal
42 representative or a court, and the oral and written instructions of the
43 principal, or the written instructions of the principal's legal representative

, nor shall the attorney in fact place the attorney in fact's name
as an owner on any of the accounts

3-4

1 or a court.

2 (f) An attorney in fact may be instructed in a power of attorney that
3 the authority granted shall not be exercised until, or shall terminate on,
4 the happening of a future event, condition or contingency, as determined
5 in a manner prescribed in the instrument.

6 (g) On the death of the principal, the attorney in fact shall follow the
7 instructions of the court, if any, having jurisdiction over the estate of the
8 principal, or any part thereof, and shall communicate with and be ac-
9 countable to the principal's personal representative, or if none, the prin-
10 cipal's successors. The attorney in fact shall promptly deliver to and put
11 in the possession and control of the principal's personal representative or
12 successors, any property of the principal and copies of any records of the
13 attorney in fact relating to transactions undertaken in the principal's be-
14 half that are deemed by the personal representative or the court to be
15 necessary or helpful in the administration of the decedent's estate.

16 (h) If an attorney in fact has a property or contract interest in the
17 subject of the power of attorney or the authority of the attorney in fact
18 is otherwise coupled with an interest in a person other than the principal,
19 this section does not impose any duties on the attorney in fact that would
20 conflict or be inconsistent with that interest.

21 Sec. 3. K.S.A. 58-657 is hereby amended to read as follows: 58-657.

22 (a) As between the principal and attorney in fact or successor attorney in
23 fact, and any agents appointed by either of them, unless the power of
24 attorney is coupled with an interest, the authority granted in a power of
25 attorney shall be modified or terminated as follows:

26 (1) On the date shown in the power of attorney and in accordance
27 with the express provisions of the power of attorney;

28 (2) when the principal, orally or in writing, or the principal's legal
29 representative in writing informs the attorney in fact or successor that the
30 power of attorney is modified or terminated, or when and under what
31 circumstances it is modified or terminated; or

32 (3) when a written notice of modification or termination of the power
33 of attorney is filed by the principal or the principal's legal representative
34 for record in the office of the register of deeds in the county of the
35 principal's residence or, if the principal is a nonresident of the state, in
36 the county of the residence of the attorney in fact last known to the
37 principal, or in the county in which is located any property specifically
38 referred to in the power of attorney.

39 (b) As between the principal and attorney in fact or successor attor-
40 ney in fact, and any agents appointed by either of them, unless the power
41 of attorney is coupled with an interest, the authority granted in a power
42 of attorney shall be terminated as follows:

43 (1) On the death of the principal, except that if the power of attorney

3-5

1 the attorney in fact or successor undertakes to act, and if in respect to
2 such act, the attorney in fact or successor acts in bad faith, fraudulently
3 or otherwise dishonestly, or if the attorney in fact or successor intention-
4 ally acts after receiving actual notice that the power of attorney has been
5 revoked or terminated, and thereby causes damage or loss to the principal
6 or to the principal's successors in interest, such attorney in fact or suc-
7 cessor shall be liable to the principal or to the principal's successors in
8 interest, or both, for such damages, together with reasonable attorney
9 fees, and punitive damages as allowed by law.

10 *(h) If a power of attorney does not provide the method for an attorney*
11 *in fact's resignation, an attorney in fact may resign by giving notice to*
12 *the principal and, if the principal is disabled:*

13 *(1) To the conservator or guardian, if one has been appointed for the*
14 *principal, any co-attorney in fact or successor attorney in fact, and the*
15 *appointing court;*

16 *(2) to the successor attorney in fact, if one is named in the power of*
17 *attorney document; or*

18 *(3) if there is no person described in subsections (h)(1) or (2), the*
19 *notice may be given to:*

20 *(A) The principal's caregiver;*

21 *(B) another person reasonably believed by the attorney in fact to have*
22 *sufficient interest in the principal's welfare; or*

23 *(C) a governmental agency having authority to protect the welfare of*
24 *the principal.*

25 Sec. 4. K.S.A. 58-652, 58-656 and 58-657 are hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its
27 publication in the statute book.

civil penalty shall be imposed, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the state; and

(3) at the time the person furnished the state with information about the violation, no criminal prosecution, civil action or administrative action had commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) In a civil action brought pursuant to subsection (a), proof of specific intent to defraud is not required.

(d) This section does not apply to claims, records or statements ~~made under the state revenue and taxation code.~~

Sec. 4. (a) The attorney general shall diligently investigate a violation under section 3, and amendments thereto. If the attorney general finds that a person has violated or is violating section 3, and amendments thereto, the attorney general may bring a civil action under this section against that person. Further, the attorney general may utilize the assistance of city and county attorneys in cases involving their respective political subdivisions or may utilize funds available pursuant to section 8, and amendments thereto, to engage the services of private attorneys to assist in carrying out the purposes of this act, or both, at times when the attorney general determines the need exists. All local prosecutors and private attorneys shall only participate at the request, and under the direction of, the attorney general.

(b) Except as provided in section 6, and amendments thereto, nothing in this act shall be construed to create a private cause of action.

Sec. 5. (a) A civil action under section 3, and amendments thereto, may not be brought more than 6 years after the date on which the violation was committed.

(b) A civil action under section 3, and amendments thereto, may be brought for activity prior to the effective date of this act if the limitation period set in subsection (a) has not lapsed.

(c) In any action brought under section 3, and amendments thereto, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the

text44ball

related to state taxation law made pursuant to chapter 79 of the Kansas Statutes Annotated, and amendments thereto

Session of 2009

SENATE BILL No. 44

By Committee on Judiciary

1-16

Proposed Technical Amendment

Prepared by: Gordon Self
Revisor of Statutes Office

March 17, 2009

9 AN ACT concerning civil actions and civil penalties; relating to the sub-
10 mission of false or fraudulent claims to or the performance of fraud-
11 ulent acts upon the state or a political subdivision thereof.

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

14 Section 1. Sections 1 through 11, and amendments thereto, shall be
15 known and may be cited as the "Kansas false claims act."

16 Sec. 2. For purposes of this act:

17 (a) "Act" means the Kansas false claims act.

18 (b) "Claim" includes any request or demand, whether under contract
19 or otherwise, for money, property or services made to any employee,
20 officer or agent of the state or any political subdivision thereof or made
21 to any contractor, grantee or other recipient if the state or any political
22 subdivision thereof provides any portion of the money, property or serv-
23 ices which is requested or demanded, or if the state will reimburse such
24 contractor, grantee or other recipient for any portion of the money or
25 property which is requested or demanded.

26 (c) "Political subdivision" includes political or taxing subdivisions of
27 the state, including municipal and quasi-municipal corporations, boards,
28 commissions, authorities, councils, committees, subcommittees and other
29 subordinate groups or administrative units thereof, receiving or expend-
30 ing and supported, in whole or in part, by public funds and any municipi-
31 pality as defined in K.S.A. 75-1117, and amendments thereto.

32 (d) "Person" includes any natural person, corporation, firm, associa-
33 tion, organization, partnership, business or trust.

34 (e) "Knowing" and "knowingly" mean that a person, with respect to
35 information, does any of the following:

36 (1) Has actual knowledge of the information;

37 (2) acts in deliberate ignorance of the truth or falsity of the infor-
38 mation; or

39 (3) acts in reckless disregard of the truth or falsity of the information.

40 Sec. 3. (a) A person who commits any of the following acts shall be
liable to the state or any affected political subdivision thereof, for three
times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

SENATE BILL No. 44

By Committee on Judiciary

1-16

Balloon 3

9 AN ACT concerning civil actions and civil penalties: relating to the sub-
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20 officer or agent of the state or any political subdivision thereof or made
21 to any contractor, grantee or other recipient if the state or any political
22 subdivision thereof provides any portion of the money, property or serv-
23 ices which is requested or demanded, or if the state will reimburse such
24 contractor, grantee or other recipient for any portion of the money or
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28 commissions, authorities, councils, committees, subcommittees and other
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39 (3) acts in reckless disregard of the truth or falsity of the information.

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42 times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

House Judiciary
Date 3-17-09
Attachment # 5

5-2

1 civil penalty shall be imposed, if the court finds all of the following:

2 (1) The person committing the violation furnished officials of the
3 state who are responsible for investigating false claims violations with all
4 information known to that person about the violation within 30 days after
5 the date on which the person first obtained the information;

6 (2) the person fully cooperated with any investigation by the state;
7 and

8 (3) at the time the person furnished the state with information about
9 the violation, no criminal prosecution, civil action or administrative action
10 had commenced with respect to the violation and the person did not have
11 actual knowledge of the existence of an investigation into the violation.

12 (c) In a civil action brought pursuant to subsection (a), proof of spe-
13 cific intent to defraud is not required. ^

An innocent mistake shall be a defense to an action under this act.

14 (d) This section does not apply to claims, records or statements made
15 under the state revenue and taxation code.

16 Sec. 4. (a) The attorney general shall diligently investigate a violation
17 under section 3, and amendments thereto. If the attorney general finds
18 that a person has violated or is violating section 3, and amendments
19 thereto, the attorney general may bring a civil action under this section
20 against that person. Further, the attorney general may utilize the assis-
21 tance of city and county attorneys in cases involving their respective po-
22 litical subdivisions or may utilize funds available pursuant to section 8,
23 and amendments thereto, to engage the services of private attorneys to
24 assist in carrying out the purposes of this act, or both, at times when the
25 attorney general determines the need exists. All local prosecutors and
26 private attorneys shall only participate at the request, and under the di-
27 rection of, the attorney general.

28 (b) Except as provided in section 6, and amendments thereto, nothing
29 in this act shall be construed to create a private cause of action.

30 Sec. 5. (a) A civil action under section 3, and amendments thereto,
31 may not be brought more than 6 years after the date on which the vio-
32 lation was committed.

33 (b) A civil action under section 3, and amendments thereto, may be
34 brought for activity prior to the effective date of this act if the limitation
35 period set in subsection (a) has not lapsed.

36 (c) In any action brought under section 3, and amendments thereto,
37 the state shall be required to prove all essential elements of the cause of
38 action, including damages, by a preponderance of the evidence.

39 (d) Notwithstanding any other provision of law, a guilty verdict ren-
40 dered in a criminal proceeding charging false statements or fraud,
41 whether upon a verdict after trial or upon a plea of guilty or nolo con-
42 tendere, shall estop the defendant from denying the essential elements
43 of the offense in any action which involves the same transaction as in the

SENATE BILL No. 44

By Committee on Judiciary

1-16

Balloon 4

House Judiciary
Date 3-17-09
Attachment # 4

9 AN ACT concerning civil actions and civil penalties; relating to the sub-
10 mission of false or fraudulent claims to or the performance of fraud-
11 ulent acts upon the state or a political subdivision thereof.

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

14 Section 1. Sections 1 through 11, and amendments thereto, shall be
15 known and may be cited as the "Kansas false claims act."

16 Sec. 2. For purposes of this act:

17 (a) "Act" means the Kansas false claims act.

18 (b) "Claim" includes any request or demand, whether under contract
19 or otherwise, for money, property or services made to any employee,
20 officer or agent of the state or any political subdivision thereof or made
21 to any contractor, grantee or other recipient if the state or any political
22 subdivision thereof provides any portion of the money, property or serv-
23 ices which is requested or demanded, or if the state will reimburse such
24 contractor, grantee or other recipient for any portion of the money or
25 property which is requested or demanded.

26 (c) "Political subdivision" includes political or taxing subdivisions of
27 the state, including municipal and quasi-municipal corporations, boards,
28 commissions, authorities, councils, committees, subcommittees and other
29 subordinate groups or administrative units thereof, receiving or expend-
30 ing and supported, in whole or in part, by public funds and any municipi-
31 pality as defined in K.S.A. 75-1117, and amendments thereto.

32 (d) "Person" includes any natural person, corporation, firm, associa-
33 tion, organization, partnership, business or trust.

34 (e) "Knowing" and "knowingly" mean that a person, with respect to
35 information, does any of the following:

- 36 (1) Has actual knowledge of the information;
- 37 (2) acts in deliberate ignorance of the truth or falsity of the infor-
38 mation; or
- 39 (3) acts in reckless disregard of the truth or falsity of the information.

40 Sec. 3. (a) A person who commits any of the following acts shall be
41 liable to the state or any affected political subdivision thereof, for three
42 times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

6-2

- 1 civil penalty shall be imposed, if the court finds all of the following:
- 2 (1) The person committing the violation furnished officials of the
3 state who are responsible for investigating false claims violations with all
4 information known to that person about the violation within 30 days after
5 the date on which the person first obtained the information;
- 6 (2) the person fully cooperated with any investigation by the state;
7 and
- 8 (3) at the time the person furnished the state with information about
9 the violation, no criminal prosecution, civil action or administrative action
10 had commenced with respect to the violation and the person did not have
11 actual knowledge of the existence of an investigation into the violation.
- 12 (c) ~~In a civil action brought pursuant to subsection (a), proof of specific~~
13 ~~intent to defraud is not required.~~
- 14 (4) This section does not apply to claims, records or statements made
15 under the state revenue and taxation code.
- 16 Sec. 4. (a) The attorney general shall diligently investigate a violation
17 under section 3, and amendments thereto. If the attorney general finds
18 that a person has violated or is violating section 3, and amendments
19 thereto, the attorney general may bring a civil action under this section
20 against that person. Further, the attorney general may utilize the assistance
21 of city and county attorneys in cases involving their respective political
22 subdivisions or may utilize funds available pursuant to section 8,
23 and amendments thereto, to engage the services of private attorneys to
24 assist in carrying out the purposes of this act, or both, at times when the
25 attorney general determines the need exists. All local prosecutors and
26 private attorneys shall only participate at the request, and under the direction
27 of, the attorney general.
- 28 (b) Except as provided in section 6, and amendments thereto, nothing
29 in this act shall be construed to create a private cause of action.
- 30 Sec. 5. (a) A civil action under section 3, and amendments thereto,
31 may not be brought more than 6 years after the date on which the violation
32 was committed.
- 33 (b) A civil action under section 3, and amendments thereto, may be
34 brought for activity prior to the effective date of this act if the limitation
35 period set in subsection (a) has not lapsed.
- 36 (c) In any action brought under section 3, and amendments thereto,
37 the state shall be required to prove all essential elements of the cause of
38 action, including damages, by a preponderance of the evidence.
- 39 (d) Notwithstanding any other provision of law, a guilty verdict rendered
40 in a criminal proceeding charging false statements or fraud,
41 whether upon a verdict after trial or upon a plea of guilty or nolo contendere,
42 shall estop the defendant from denying the essential elements
43 of the offense in any action which involves the same transaction as in the

SENATE BILL No. 44

By Committee on Judiciary

1-16

9 AN ACT concerning civil actions and civil penalties; relating to the sub-
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22 subdivision thereof provides any portion of the money, property or serv-
23 ices which is requested or demanded, or if the state will reimburse such
24 contractor, grantee or other recipient for any portion of the money or
25 property which is requested or demanded.

26 (c) "Political subdivision" includes political or taxing subdivisions of
27 the state, including municipal and quasi-municipal corporations, boards,
28 commissions, authorities, councils, committees, subcommittees and other
29 subordinate groups or administrative units thereof, receiving or expend-
30 ing and supported, in whole or in part, by public funds and any municipi-
31 pality as defined in K.S.A. 75-1117, and amendments thereto.

32 (d) "Person" includes any natural person, corporation, firm, associa-
33 tion, organization, partnership, business or trust.

34 (e) "Knowing" and "knowingly" mean that a person, with respect to
35 information, does any of the following:

36 (1) Has actual knowledge of the information;

37 (2) acts in deliberate ignorance of the truth or falsity of the infor-
38 mation; or

39 (3) acts in reckless disregard of the truth or falsity of the information.

40 Sec. 3. (a) A person who commits any of the following acts shall be
41 liable to the state or any affected political subdivision thereof, for three
42 times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

House Judiciary

Date 3-17-09

Attachment # 7

17-2

1 civil penalty shall be imposed, if the court finds all of the following:

2 (1) The person committing the violation furnished officials of the
3 state who are responsible for investigating false claims violations with all
4 information known to that person about the violation within 30 days after
5 the date on which the person first obtained the information;

6 (2) the person fully cooperated with any investigation by the state;
7 and

8 (3) at the time the person furnished the state with information about
9 the violation, no criminal prosecution, civil action or administrative action
10 had commenced with respect to the violation and the person did not have
11 actual knowledge of the existence of an investigation into the violation.

12 (c) In a civil action brought pursuant to subsection (a), proof of spe-
13 cific intent to defraud is not required.

14 (d) This section does not apply to claims, records or statements made
15 under the state revenue and taxation code.

16 Sec. 4. (a) The attorney general shall diligently investigate a violation
17 under section 3, and amendments thereto. If the attorney general finds
18 that a person has violated or is violating section 3, and amendments
19 thereto, the attorney general may bring a civil action under this section
20 against that person. Further, the attorney general may utilize the assis-
21 tance of city and county attorneys in cases involving their respective po-
22 litical subdivisions or may utilize funds available pursuant to section 8,
23 and amendments thereto, to engage the services of private attorneys to
24 assist in carrying out the purposes of this act, or both, at times when the
25 attorney general determines the need exists. All local prosecutors and
26 private attorneys shall only participate at the request, and under the di-
27 rection of, the attorney general.

28 (b) Except as provided in section 6, and amendments thereto, nothing
29 in this act shall be construed to create a private cause of action.

30 Sec. 5. (a) A civil action under section 3, and amendments thereto,
31 may not be brought more than 6 years after the date on which the vio-
32 lation was committed.

discovered

or reasonably should have
been discovered.

33 (b) A civil action under section 3, and amendments thereto, may be
34 brought for activity prior to the effective date of this act if the limitation
35 period set in subsection (a) has not lapsed.

36 (c) In any action brought under section 3, and amendments thereto,
37 the state shall be required to prove all essential elements of the cause of
38 action, including damages, by a preponderance of the evidence.

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40 dered in a criminal proceeding charging false statements or fraud,
41 whether upon a verdict after trial or upon a plea of guilty or nolo con-
42 tendere, shall estop the defendant from denying the essential elements
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SENATE BILL No. 44

By Committee on Judiciary

1-16

Balloon 5

9 AN ACT concerning civil actions and civil penalties; relating to the sub-
10 mission of false or fraudulent claims to or the performance of fraud-
11 ulent acts upon the state or a political subdivision thereof.

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21 to any contractor, grantee or other recipient if the state or any political
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24 contractor, grantee or other recipient for any portion of the money or
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35 information, does any of the following:

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39 (3) acts in reckless disregard of the truth or falsity of the information.

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41 liable to the state or any affected political subdivision thereof, for three
42 times the amount of damages which the state or such political subdivision
43 sustains because of the act of that person and shall be liable to the state

House Judiciary
Date 3-17-09
Attachment # 8

8-2

1 civil penalty shall be imposed, if the court finds all of the following:

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3 state who are responsible for investigating false claims violations with all
4 information known to that person about the violation within 30 days after
5 the date on which the person first obtained the information;

6 (2) the person fully cooperated with any investigation by the state;
7 and

8 (3) at the time the person furnished the state with information about
9 the violation, no criminal prosecution, civil action or administrative action
10 had commenced with respect to the violation and the person did not have
11 actual knowledge of the existence of an investigation into the violation.

12 (c) In a civil action brought pursuant to subsection (a), proof of spe-
13 cific intent to defraud is not required.

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15 under the state revenue and taxation code.

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20 against that person. Further, the attorney general may utilize the assis-
21 tance of city and county attorneys in cases involving their respective po-
22 litical subdivisions or may utilize funds available pursuant to section 8,
23 and amendments thereto, to engage the services of private attorneys to
24 assist in carrying out the purposes of this act, or both, at times when the
25 attorney general determines the need exists. All local prosecutors and
26 private attorneys shall only participate at the request, and under the di-
27 rection of, the attorney general.

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29 in this act shall be construed to create a private cause of action.

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31 may not be brought more than 6 years after the date on which the vio-
32 lation was committed.

33 (b) A civil action under section 3, and amendments thereto, may be
34 brought for activity prior to the effective date of this act if the limitation
35 period set in subsection (a) has not lapsed.

36 (c) In any action brought under section 3, and amendments thereto,
37 the state shall be required to prove all essential elements of the cause of
38 action, including damages, by a preponderance of the evidence.

clear and convincing

39 (d) Notwithstanding any other provision of law, a guilty verdict ren-
40 dered in a criminal proceeding charging false statements or fraud,
41 whether upon a verdict after trial or upon a plea of guilty or nolo con-
42 tendere, shall estop the defendant from denying the essential elements
43 of the offense in any action which involves the same transaction as in the

SENATE BILL No. 87

By Committee on Judiciary

1-23

Balloon 1

House Judiciary
Date 3-17-09
Attachment # 9

10 AN ACT concerning public agencies; relating to disclosure of certain
11 records; administrative procedure; judicial review; amending K.S.A.
12 77-501, 77-503, 77-511, 77-512, 77-513, 77-519, 77-520, 77-521, 77-
13 523, 77-525, 77-528, 77-531, 77-532, 77-534, 77-537, 77-601, 77-612,
14 77-614, 77-617 and 77-621 and K.S.A. 2008 Supp. 45-221, 77-514, 77-
15 527, 77-529, 77-549, 77-550, 77-551 and 77-603 and repealing the
16 existing sections; also repealing K.S.A. 77-507, 77-507a and 77-605 and
17 K.S.A. 2003 Supp. 77-514, as amended by section 39 of chapter 145
18 of the 2004 Session Laws of Kansas, and K.S.A. 77-551, as amended
19 by section 43 of chapter 145 of the 2004 Session Laws of Kansas.
20

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

22 New Section 1. (a) In any proceeding under the Kansas administra-
23 tive procedure act, the presiding officer may provide for the omission
24 from any required notice or order or otherwise keep out of the public
25 record the name, address or other contact information of alleged victims
26 of crime, abuse, domestic violence or sexual assault when it is alleged in
27 an affidavit or a pleading under oath that the health, safety or liberty of
28 such a person would be jeopardized by disclosure of that information. In
29 such cases, notice or service to such persons shall be made through the
30 presiding officer.

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

33 Sec. 2. K.S.A. 2008 Supp. 45-221 is hereby amended to read as fol-
34 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
35 law, a public agency shall not be required to disclose:

36 (1) Records the disclosure of which is specifically prohibited or re-
37 stricted by federal law, state statute or rule of the Kansas supreme court
38 or rule of the senate committee on confirmation oversight relating to
39 information submitted to the committee pursuant to K.S.A. 2008 Supp.
40 75-4315d, and amendments thereto, or the disclosure of which is prohib-
41 ited or restricted pursuant to specific authorization of federal law, state
42 statute or rule of the Kansas supreme court or rule of the senate com-
43 mittee on confirmation oversight relating to information submitted to the

9-2

1 cations services; (B) transportation and sewer or wastewater treatment
 2 systems, facilities or equipment; or (C) private property or persons if the
 3 records are submitted to the agency. For purposes of this paragraph
 4 security means measures that protect against criminal acts intended to
 5 intimidate or coerce the civilian population, influence government policy
 6 by intimidation or coercion or to affect the operation of government by
 7 disruption of public services, mass destruction, assassination or kidnap-
 8 ping. Security measures include, but are not limited to, intelligence in-
 9 formation, tactical plans, resource deployment and vulnerability
 10 assessments.

11 (46) Any information or material received by the register of deeds of
 12 a county from military discharge papers (DD Form 214). Such papers
 13 shall be disclosed: To the military dischargee; to such dischargee's im-
 14 mediate family members and lineal descendants; to such dischargee's
 15 heirs, agents or assigns; to the licensed funeral director who has custody
 16 of the body of the deceased dischargee; when required by a department
 17 or agency of the federal or state government or a political subdivision
 18 thereof; when the form is required to perfect the claim of military service
 19 or honorable discharge or a claim of a dependent of the dischargee; and
 20 upon the written approval of the commissioner of veterans affairs, to a
 21 person conducting research.

22 (47) Information that would reveal the location of a shelter or a sa-
 23 fehouse or similar place where persons are provided protection from
 24 abuse or the name, address, location or other contact information of al-
 25 leged victims of crime, domestic violence or sexual assault ~~when the release~~
 26 ~~of such information may jeopardize the health, safety or liberty of that~~
 27 ~~person.~~

abuse,

28 (b) Except to the extent disclosure is otherwise required by law or as
 29 appropriate during the course of an administrative proceeding or on ap-
 30 appeal from agency action, a public agency or officer shall not disclose fi-
 31 nancial information of a taxpayer which may be required or requested by
 32 a county appraiser or the director of property valuation to assist in the
 33 determination of the value of the taxpayer's property for ad valorem tax-
 34 ation purposes; or any financial information of a personal nature required
 35 or requested by a public agency or officer, including a name, job descrip-
 36 tion or title revealing the salary or other compensation of officers, em-
 37 ployees or applicants for employment with a firm, corporation or agency,
 38 except a public agency. Nothing contained herein shall be construed to
 39 prohibit the publication of statistics, so classified as to prevent identifi-
 40 cation of particular reports or returns and the items thereof.

41 (c) As used in this section, the term "cited or identified" shall not
 42 include a request to an employee of a public agency that a document be
 43 prepared.

12

SENATE BILL No. 87

By Committee on Judiciary

1-23

10 AN ACT concerning public agencies; relating to disclosure of certain
11 records; administrative procedure; judicial review; amending K.S.A.
12 77-501, 77-503, 77-511, 77-512, 77-513, 77-519, 77-520, 77-521, 77-
13 523, 77-525, 77-528, 77-531, 77-532, 77-534, 77-537, 77-601, 77-612,
14 77-614, 77-617 and 77-621 and K.S.A. 2008 Supp. 45-221, 77-514, 77-
15 527, 77-529, 77-549, 77-550, 77-551 and 77-603 and repealing the
16 existing sections; also repealing K.S.A. 77-507, 77-507a and 77-605 and
17 K.S.A. 2003 Supp. 77-514, as amended by section 39 of chapter 145
18 of the 2004 Session Laws of Kansas, and K.S.A. 77-551, as amended
19 by section 43 of chapter 145 of the 2004 Session Laws of Kansas.

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

22 New Section 1. (a) In any proceeding under the Kansas administra-
23 tive procedure act, the presiding officer may provide for the omission
24 from any required notice or order or otherwise keep out of the public
25 record the name, address or other contact information of alleged victims
26 of crime, abuse, domestic violence or sexual assault when it is alleged in
27 an affidavit or a pleading under oath that the health, safety or liberty of
28 such a person would be jeopardized by disclosure of that information. In
29 such cases, notice or service to such persons shall be made through the
30 presiding officer.

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

33 Sec. 2. K.S.A. 2008 Supp. 45-221 is hereby amended to read as fol-
34 lows: 45-221. (a) Except to the extent disclosure is otherwise required by
35 law, a public agency shall not be required to disclose:

36 (1) Records the disclosure of which is specifically prohibited or re-
37 stricted by federal law, state statute or rule of the Kansas supreme court
38 or rule of the senate committee on confirmation oversight relating to
39 information submitted to the committee pursuant to K.S.A. 2008 Supp.
40 75-4315d, and amendments thereto, or the disclosure of which is prohib-
41 ited or restricted pursuant to specific authorization of federal law, state
42 statute or rule of the Kansas supreme court or rule of the senate com-
mittee on confirmation oversight relating to information submitted to the

House Judiciary
Date 3-17-09
Attachment # 10

10-2

1 action or a later date fixed by the reviewing court.

2 Sec. 6. K.S.A. 77-512 is hereby amended to read as follows: 77-512.

3 (a) A state agency may not revoke, suspend, modify, annul, withdraw,
4 refuse to renew, or amend a license unless the state agency first gives
5 notice and an opportunity for a hearing in accordance with this act.

6 (b) *Unless otherwise provided by law, the burden of proof for dis-*
7 *puted issues of fact in occupational or professional license disciplinary*
8 *proceedings against an individual shall be by clear and convincing*
9 *evidence.*

10 (c) This section does not preclude a state agency from (a) taking apply
11 to (1) immediate action to protect the public interest in accordance with
12 K.S.A. 77-536, and amendments thereto, or (b) adopting (2) the adoption
13 of rules and regulations, otherwise within the scope of its an agency's
14 authority, pertaining to a class of licensees, including rules and regulations
15 affecting the existing licenses of a class of licensees.

16 Sec. 7. K.S.A. 77-513 is hereby amended to read as follows: 77-513.

17 When a statute provides for a hearing in accordance with this act, the
18 hearing shall be governed by K.S.A. 77-513 through 77-532, and amend-
19 ments thereto, except as otherwise provided by:

20 (a) A statute other than this act; or

21 (b) K.S.A. 77-533 through ~~77-541~~ 77-542, and amendments thereto.

22 Sec. 8. K.S.A. 2008 Supp. 77-514 is hereby amended to read as fol-
23 lows: 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37, 121,~~

24 ~~and amendments thereto, The~~ agency head, one or more members of the
25 agency head or a presiding officer assigned by the office of administrative
26 hearings shall be the presiding officer. ~~For all other agencies, the agency~~
27 ~~head, one or more members of the agency head, a presiding officer as-~~
28 ~~signed by the office of administrative hearings, or, unless prohibited by~~
29 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~
30 ~~ignated by the agency head shall be the presiding officer.~~

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

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

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

41 (e) If a substitute is required for a person who is disqualified or be-
42 comes unavailable for any other reason, any action taken by a duly ap-
pointed substitute for a disqualified or unavailable person is as effective

For all agencies, except for the state court of tax appeals, the