

CHAPTER 145

SENATE BILL No. 141

(Amends Chapter 48)

AN ACT concerning administrative procedure; concerning presiding officers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, as amended by section 1 of 2004 House Substitute for Senate Bill No. 136, 31-140, 36-509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163, 65-163a, 65-525, 65-526, 65-673, 65-780, 65-786, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-6207, 76-3110, 77-505, 77-549, 77-550, 77-551, 77-551 as amended by section 42 of this act, 79-3313, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504 and K.S.A. 2003 Supp. 75-37,121, 77-514, 77-514 as amended by section 38 of this act, 82a-1503 and 82a-1901 and repealing the existing sections; also repealing K.S.A. 75-37,122 and 75-5611a.

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

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

New Sec. 2. On and after July 1, 2009: (a) Except as otherwise provided by this act, all of the powers, duties and functions of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act are hereby transferred to and conferred and imposed upon the office of administrative hearings and the director established by this act.

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

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

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

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

(f) All orders and directives of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in existence on the effective date of this section shall con-

tinue to be effective and shall be deemed to be orders and directives of the director of the office of administrative hearings established by this act until revised, amended or nullified pursuant to law.

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

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

New Sec. 3. Except as otherwise provided in this act, on July 1, 2009, any presiding officer in the administrative hearings section of all agencies which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 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 established under this act. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

New Sec. 4. On and after July 1, 2009:

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

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

New Sec. 5. On and after July 1, 2009:

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

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

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

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

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

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

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

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

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

provision of the vehicle dealers and manufacturers licensing act, of which K.S.A. 8-2425 and amendments thereto and this section shall be a part.

Sec. 10. On and after July 1, 2005, K.S.A. 21-3110, as amended by section 1 of 2004 House Substitute for Senate Bill No. 136, is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

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

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

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

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

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to:

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

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

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

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

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

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

(10) "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments thereto, any employee of the Kansas department of corrections; or

(c) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

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

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

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

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

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

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

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

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

(19) "Public officer" includes the following, whether elected or ap-

pointed:

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

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

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

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

(e) A law enforcement officer.

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

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

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

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

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

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

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

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

Sec. 12. On and after July 1, 2005, K.S.A. 36-509 is hereby amended to read as follows: 36-509. (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary ~~or a person designated by the secretary as a hearing officer~~ *presiding officer from the office of administrative hearings* may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

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

Sec. 13. On and after July 1, 2005, K.S.A. 40-2,137 is hereby amended to read as follows: 40-2,137. (a) The costs incurred by the department of insurance in conducting any administrative hearing authorized by article 33 of chapter 40 of the Kansas Statutes Annotated ~~and subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A. 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsec-~~

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

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

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

Sec. 14. On and after July 1, 2008, K.S.A. 44-322a is hereby amended to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the secretary of human resources, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322 and amendments thereto to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or ~~the secretary's authorized representative~~ *a presiding officer from the office of administrative hearings* shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

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

Sec. 15. On and after July 1, 2007, K.S.A. 44-1005 is hereby amended to read as follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice, and who can articulate a prima facie case pursuant to a recognized legal theory of discrimination, may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing, articulating the prima facie case, which

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

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

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

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

(e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The complainant, respondent and commission shall have 45 days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement signed by all parties in interest. The parties may amend a conciliation agreement at any time prior to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

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

(g) The complainant or respondent may apply to the presiding officer

for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the presiding officer shall issue such subpoena.

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

(i) Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission ~~on or after July 1, 1996,~~ may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. ~~The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Complaints filed with the commission before July 1, 1996, shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint.~~ Any such dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto. The provisions of this section shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015 et seq. and amendments thereto.

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

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

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

(m) If the presiding officer finds that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discrim-

inatory practice, the presiding officer shall render an order dismissing the complaint as to such respondent.

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

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

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

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

Sec. 17. On and after July 1, 2005, K.S.A. 65-163 is hereby amended to read as follows: 65-163 (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply system permit obtained in a manner similar to that prescribed by this section from the secretary.

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

(3) The secretary may adopt rules and regulations establishing a program of annual certification by public water supply systems that have staff qualified to approve the extension of distribution systems without the necessity of securing an additional permit for the extension provided the plans for the extension are prepared by a professional engineer as defined by K.S.A. 74-7003, and amendments thereto.

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

(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification

or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary.

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

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

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

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

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

(e) The secretary shall establish by rule and regulation a system of fees for the inspection and regulation of public water supplies. No such fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public water supply system. All such fees shall be paid quarterly in the manner provided for fees imposed on retail sales by public water supply systems pursuant to K.S.A. 82a-954, and amendments thereto. The secretary shall remit all moneys collected for such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the public water supply fee fund created by K.S.A. 65-163c, and amendments thereto.

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

imbursement of expenses. The advisory committee shall meet at least four times each year on call of the secretary or a majority of the members of the committee.

Sec. 18. On and after July 1, 2005, K.S.A. 65-163a is hereby amended to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead to the contamination of the public water supply system and may continue to refuse the delivery of water to the premises until the condition is remedied.

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

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

Sec. 19. On and after July 1, 2005, K.S.A. 65-525 is hereby amended to read as follows: 65-525. (a) Records in the possession of the department of health and environment or its agents regarding child care facilities, maternity centers or family day care homes shall not be released publicly in a manner that would identify individuals, unless required by law.

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

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

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

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

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

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

Sec. 20. On and after July 1, 2005, K.S.A. 65-526 is hereby amended to read as follows: 65-526. (a) The secretary of health and environment,

in addition to any other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, may assess a civil fine, after proper notice and an opportunity to be heard *in accordance with the Kansas administrative procedure act*, against a licensee or registrant for each violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. Each civil fine assessed under this section shall not exceed \$500. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 21. On and after July 1, 2005, K.S.A. 65-673 is hereby amended to read as follows: 65-673. (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

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

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

Sec. 22. On and after July 1, 2005, K.S.A. 65-780 is hereby amended to read as follows: 65-780. The secretary may deny, suspend, revoke or modify or refuse to renew the provisions of any license or permit issued under this act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act that the applicant, licensee or permit holder or any agent or employee, thereof has:

(a) Been convicted of or pleaded guilty to a violation of this act or any rules and regulations promulgated thereunder;

(b) failed to comply with any provision or requirement of this act or any rules and regulations promulgated thereunder;

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

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

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

or

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

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

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

to read as follows: 65-786. (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder. *Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.*

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

- (1) It has been entered;
- (2) the reasons therefor; and

(3) that upon written request from the person subject to the order within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. *Any such hearing shall be held by the secretary or presiding officer from the office of administrative hearings.* If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

Sec. 24. On and after July 1, 2005, K.S.A. 65-2305 is hereby amended to read as follows: 65-2305. (a) The secretary of health and environment shall have the power and authority and is hereby charged with the duty of enforcing the provisions of this act, and the secretary is hereby authorized and directed to make, amend or revoke rules and regulations and orders for the efficient enforcement of this act.

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

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

(d) All orders and rules and regulations adopted by the secretary pur-

suant to this act shall become effective as provided by law.

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

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

Sec. 25. On and after July 1, 2005 K.S.A. 65-3483 is hereby amended to read as follows: 65-3483. (a) If, within 150 days after receipt of an application, the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife and parks of the proposed facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The natural environment and ecology;

(B) public health and safety;

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

(D) water and air quality and wildlife.

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

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

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

Sec. 26. On and after July 1, 2005, K.S.A. 65-3488 is hereby amended to read as follows: 65-3488. (a) Permits for PCB disposal facilities shall be issued for fixed terms not to exceed 10 years.

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

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

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

Sec. 27. On and after July 1, 2005, K.S.A. 65-3490 is hereby amended to read as follows: 65-3490. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of receipt of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, ~~and shall give not less than 10 days' written notice of the time and place of the hearing. Within 30 days after such hearing and receipt of briefs or oral arguments, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, the secretary shall affirm, reverse~~

or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance of formal rules of evidence or pleading at any hearing before the secretary or director. *Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.*

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

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

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

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

Sec. 30. On and after July 1, 2007, K.S.A. 74-8804 is hereby amended to read as follows: 74-8804. (a) During race meetings, the commission and its designated employees may observe and inspect all race-track facilities operated by licensees and all racetracks simulcasting races to racetrack facilities in Kansas, including but not limited to all machines, equipment and facilities used for parimutuel wagering.

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

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in Kansas, for the purpose of ascertaining compliance with any provision of this act or any

rule and regulation adopted hereunder.

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

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

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

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

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

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

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

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

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

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

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

(2) new evidence of a convincing nature is produced; or

(3) the best interests of racing and the state may be better served.

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

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

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

regulating:

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

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

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

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

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

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

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

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

Sec. 31. On and after July 1, 2007, K.S.A. 74-8816 is hereby amended to read as follows: 74-8816. (a) The commission shall require occupation licenses for:

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

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

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

(c) A person required to be licensed pursuant to subsection (a) shall apply for such license in a manner and upon forms prescribed and furnished by the commission. The commission may require the applicant to submit to fingerprinting. Occupation licenses shall be issued for a period

established by the commission but not less than one year or more than three years. The commission shall establish the amount of application fees and license fees for different types of occupation licenses, but no such fee shall exceed \$200 a year. The application fee shall not be refundable if the applicant fails to qualify for a license and shall include the cost of processing fingerprints if they are required by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

(h) The stewards at any horse race meeting and the racing judges at any greyhound race meeting may impose on an occupation licensee a civil fine not exceeding \$500 or may suspend any occupation licensee's license for a period not exceeding 15 days upon a finding by at least two of the stewards or racing judges that there is probable cause to believe that the

occupation licensee has violated the provisions of this act or any rule or regulation of the commission. No such fine or suspension shall be ordered except after notice and opportunity for hearing in accordance with procedures established by rules and regulations of the commission. Any order imposing such a fine or suspension is effective when rendered. The order shall be subject to appeal to the commission, and may be stayed pending such appeal, as provided by rules and regulations of the commission. Proceedings on appeal shall be in accordance with the provisions of the Kansas administrative procedure act.

Sec. 32. On and after July 1, 2007, K.S.A. 74-8817 is hereby amended to read as follows: 74-8817. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to sell goods or services within a race-track facility where the organization licensee conducts race meetings unless such business has been issued a concessionaire license by the commission.

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

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

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

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

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

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

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

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

jurisdiction.

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

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

Sec. 33. On and after July 1, 2007, K.S.A. 74-8837 is hereby amended to read as follows: 74-8837. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to provide integral racing or wagering equipment or services, as designated by the commission, to an organization licensee unless such business has been issued a racing or wagering equipment or services license by the commission. Such equipment and services include but are not limited to totalisator, photo finish, video replay and video reception and transmission equipment or services.

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

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

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

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

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances or has been

adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a violation;

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

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

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

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

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

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

Sec. 34. On and after July 1, 2005, K.S.A. 2003 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. ~~On and after July 1, 1999:~~

(a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. *The director shall be in the unclassified service under the Kansas civil service act.*

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

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

(d) The director may furnish ~~administrative law judges presiding officers~~ on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection ~~(b)~~ *(h)*.

(e) ~~On or before January 1, 1999,~~ The ~~department~~ *secretary* of administration ~~shall may~~ adopt rules and regulations:

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

~~(2) to establish procedures for agencies to request and for the director~~

~~to assign administrative law judges. The department of social and rehabilitation services presiding officers. An agency may neither select nor reject any individual administrative law judge presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;~~

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

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

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

(f) The director may:

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

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

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

(h) *The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:*

(1) *On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.*

(2) *On and after July 1, 2006: Emergency medical services board, emergency medical services council and Kansas human rights commission.*

(3) *On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state board of tax appeals.*

(4) *On and after July 1, 2008: Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.*

(5) *On and after July 1, 2009: Except for administrative hearings conducted by the state board of pharmacy, Kansas dental board, state board of veterinary examiners, behavioral sciences regulatory board, state board of cosmetology, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, Kansas board of barbering, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, state board of healing arts, Kansas state banking board, state department of credit unions, office of the securities commissioner of Kansas and state board of technical professions, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).*

~~Effective July 1, 1998, personnel in the administrative hearings section of the department of social and rehabilitation services and support personnel for such administrative law judges, shall be transferred to the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state, and such person's services shall be deemed to have been continuous. This act shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.~~

(i) *With respect to hearings before the secretary of agriculture in accordance with the Kansas administrative procedures act, the secretary of agriculture or a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.*

(j) (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 presid-*

ing 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 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.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) 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.

Sec. 35. On and after July 1, 2008, K.S.A. 75-6207 is hereby amended to read as follows: 75-6207. (a) If the director receives a timely written request for a hearing under K.S.A. 75-6206 and amendments thereto, the director shall request ~~the secretary of administration to appoint~~ a presiding officer from the office of administrative hearings who shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether the debt claim is valid. Subject to the provisions of subsection (b), the presiding officer shall determine whether the claimed sum asserted as due and owing is correct, and if not, shall order an adjustment to the debt claim which shall be forwarded to the director and to the state agency, foreign state agency or municipality to which the debt is owed. No issue may be considered at the hearing which has been previously litigated and no collateral attack

on any judgment shall be permitted at the hearing. The order of the presiding officer shall inform the debtor of the amount determined as due, if any, and that setoff procedures have been ordered to proceed in accordance with this act. If the setoff is to be made against earnings of the debtor, the order shall include a statement that the setoff may be postponed in accordance with K.S.A. 75-6208 and amendments thereto. Orders under this section shall not be subject to administrative review.

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

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

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

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

Sec. 36. On and after July 1, 2009, K.S.A. 76-3110 is hereby amended to read as follows: 76-3110. (a) The KPR board may initiate a proceeding to effect termination of a postsecondary institution's participation in federal student aid programs by serving written notice upon the institution that the board has determined that the institution should not be eligible for participation in such programs. The notice shall include a statement of the reasons for the determination and a statement that the institution may contest the finding before a ~~hearing~~ *presiding* officer upon written request filed with the KPR board. The request to be heard must be filed within 15 days from the date of the notice of the board's determination. Upon receipt of a request by an institution to be heard, the KPR board shall notify the secretary of human resources that the appointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after receipt of notification from the KPR board, the secretary of human resources shall ~~appoint~~ *request* a ~~hearing~~ *presiding* officer ~~from a list, which shall be compiled and maintained by the secretary of human resources, of impartial persons who are representative of the public and who are qualified to serve as hearing officers.~~

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

Sec. 37. On and after July 1, 2005, K.S.A. 77-505 is hereby amended to read as follows: 77-505. Nothing in ~~this the Kansas administrative procedure act shall preclude informal settlement of matters that may make unnecessary more elaborate proceedings under this act parties from settling a matter at any time. In addition, nothing in the Kansas administrative procedure act shall preclude use of alternative dispute resolution, with consent of the agency and all parties.~~

Sec. 38. On and after July 1, 2005, K.S.A. 2003 Supp. 77-514 is hereby amended to read as follows: 77-514. (a) *For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto, the agency head, one or more members of the agency head, an administrative law*

~~judge or a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head may shall be the presiding officer. For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.~~

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

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

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

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

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

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

Sec. 39. On and after July 1, 2009, K.S.A. 2003 Supp. 77-514, as amended by section 38 of this act, is hereby amended to read as follows: 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~ The agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings shall be the presiding officer. ~~For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.~~

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

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

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

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

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

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

Sec. 40. On and after July 1, 2008, K.S.A. 77-549 is hereby amended to read as follows: 77-549. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative pro-

cedure act.

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

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

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

Sec. 41. On and after July 1, 2008, K.S.A. 77-550 is hereby amended to read as follows: 77-550. For purposes of administrative proceedings of the division of property valuation under the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of property valuation or ~~other designee~~ *a presiding officer from the office of administrative hearings* as agency head.

Sec. 42. On and after July 1, 2005, K.S.A. 77-551 is hereby amended to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) *Except as provided in subsection (b), in all hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340, and amendments thereto, any state agency specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge a presiding officer* assigned by the office of administrative hearings.

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

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

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

Sec. 43. On and after July 1, 2009, K.S.A. 77-551, as amended by section 42 of this act, is hereby amended to read as follows: 77-551. (a) ~~Except as provided in subsection (b), in all hearings of any state agency specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~ that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings.

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

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

516 and 77-517 and amendments thereto.

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

Sec. 44. On and after July 1, 2007, K.S.A. 79-3313 is hereby amended to read as follows: 79-3313. All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

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

Sec. 45. On and after July 1, 2005, K.S.A. 82a-1405 is hereby amended to read as follows: 82a-1405. (a) At the direction of the authority, the director may issue licenses for weather modification activities, as provided for in this act, but any licensee shall be limited in the exercise of activities under the license to the specified method or methods of weather modification activity within the area of expertise of the licensee.

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

- (1) The geographic area within which such activities are to be carried out;
- (2) the geographic area to be affected; and
- (3) the duration of the weather modification activities of the project or program, which period may be noncontinuous but which may not have a total duration exceeding one calendar year from the day of its issuance.

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

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

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

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

- (1) The theory and development of weather modification, including those aspects relating to procedures, materials, ecological effects and the attendant legal and social problems;
- (2) the utilization of weather modification for domestic, municipal, agricultural, industrial, recreational and other beneficial purposes; and
- (3) the protection of life, health, property and the general environment.

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

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

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

Sec. 46. On and after July 1, 2005, K.S.A. 82a-1501a is hereby amended to read as follows: 82a-1501a. (a) The water transfer hearing panel shall consist of the chief engineer, the director and the secretary. The chief engineer shall serve as chairperson of the panel. All actions of the panel shall be taken by a majority of the members. The panel shall have all powers necessary to implement the provisions of this act.

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

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

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

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

officer to be effective and if designed, implemented and maintained properly, will result in wise use and responsible conservation and management of water used by the system.

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

- (1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;
- (2) any reasonably foreseeable future beneficial use of the water;
- (3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;
- (4) alternative sources of water available to the applicant and present or future users for any beneficial use;
- (5) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;
- (6) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion, which plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer;
- (7) the effectiveness of conservation plans and practices adopted and implemented by the applicant and any other entities to be supplied water by the applicant;
- (8) the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer, which plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto; and
- (9) any applicable management program, standards, policies and rules and regulations of a groundwater management district.

Sec. 48. On and after July 1, 2005, K.S.A. 2003 Supp. 82a-1503 is hereby amended to read as follows: 82a-1503. (a) Any person desiring to make a water transfer shall file with the chief engineer an application in the form required by rules and regulations adopted by the chief engineer. If the chief engineer finds the application to be insufficient to enable the chief engineer to determine the source, nature and amount of the proposed transfer, or if the application is not complete, the application shall be returned for correction or completion or for any other necessary information.

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

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

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

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

presiding officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: The hearing facility, the court reporter, the salary of a *hearing presiding* officer who is not paid for services as a hearing officer by state funds, the travel expenses of the *hearing presiding* officer and other reasonable costs associated with the hearing. The *hearing presiding* officer may assess any or all anticipated costs to the applicant before the hearing and subsequently may assess other parties for the parties' fair and equitable portion of the anticipated costs assessed the applicant. Amounts assessed pursuant to this subsection shall be paid to the chief engineer. Upon receipt thereof, the chief engineer shall remit the entire amount to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water transfer hearing fund established by subsection (f).

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

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

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

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

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

Sec. 49. On and after July 1, 2005, K.S.A. 82a-1504 is hereby amended to read as follows: 82a-1504. (a) The *hearing presiding* officer shall render an order either approving or disapproving the proposed water transfer. The *hearing presiding* officer's order shall include findings of fact relating to each of the factors set forth in subsection (c) of K.S.A. 82a-1502 and amendments thereto. The *hearing presiding* officer may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as the *hearing presiding* officer deems necessary for the protection of the public interest of the state as a whole.

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

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

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

Sec. 50. On and after July 1, 2005, K.S.A. 2003 Supp. 82a-1901 is hereby amended to read as follows: 82a-1901. (a) Orders of the chief engineer of the division of water resources of the department of agriculture pursuant to K.S.A. 42-703, 42-722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038, and amendments thereto, and failure of the chief engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be subject to review in accordance with the provisions of the Kansas administrative procedure act.

Such review shall be conducted by the secretary of agriculture or ~~by an administrative law judge or a~~ presiding officer from the office of administrative hearings within the department of administration. The secretary of agriculture shall not have the authority otherwise to designate a presiding officer to conduct such review *unless at the party's request pursuant to K.S.A. 75-37,121, and amendments thereto.*

(b) The order of the secretary of agriculture or the administrative law judge or presiding officer upon review pursuant to subsection (a) shall be a final order under the Kansas administrative procedure act. Such order shall not be subject to reconsideration pursuant to K.S.A. 77-529 and amendments thereto and shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(c) This act shall not affect any administrative proceeding pending before the chief engineer of the division of water resources of the department of agriculture, the secretary of agriculture or any administrative hearing officer on July 1, 1999, and such matter shall proceed as though no change in the law had been made with regard to such proceeding.

~~(d) The provisions of this section shall take effect on and after July 1, 1999.~~

Sec. 51. On and after July 1, 2005, K.S.A. 2-1208a, 2-3311, 21-3110, as amended by section 1 of 2004 House Substitute for Senate Bill No. 136, 36-509, 40-2,137, 65-163, 65-163a, 65-525, 65-526, 65-673, 65-780, 65-786, 65-2305, 65-3483, 65-3488, 65-3490, 74-4904, 75-37,122, 75-5611a, 77-505, 77-551, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504 and K.S.A. 2003 Supp. 75-37,121, 77-514, 82a-1503 and 82a-1901 are hereby repealed.

Sec. 52. On and after July 1, 2007, K.S.A. 44-1005, 74-8804, 74-8816, 74-8817, 74-8837 and 79-3313 are hereby repealed.

Sec. 53. On and after July 1, 2008, K.S.A. 8-2426, 44-322a, 49-606, 66-1,117, 75-6207, 77-549 and 77-550 are hereby repealed.

Sec. 54. On and after July 1, 2009, K.S.A. 31-140, 76-3110 and 77-551 as amended by section 42 of this act and K.S.A. 2003 Supp. 77-514 as amended by section 38 of this act are hereby repealed.

Sec. 55. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 2004.
