

PROPOSED House Substitute for SENATE BILL NO. 208

By Committee on Elections

AN ACT concerning campaign finance; relating to the governmental ethics commission; modifying the investigatory and enforcement powers thereof and the schedule of registration fees for political committees; expanding the list of allowable expenditures from contributions; amending K.S.A. 25-4143, 25-4145, 25-4153a, 25-4157a, 25-4158, 25-4161, 25-4163, 25-4165, 25-4181 and 25-4182 and repealing the existing sections.

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

New Section 1. (a) The provisions of the Kansas administrative procedure act, the Kansas code of civil procedure and the Kansas judicial review act shall apply to actions by the governmental ethics commission or commission staff, including, but not limited to, applications for judicial relief in district court. All actions filed by the commission in district court pursuant to this act shall constitute a claim for purposes of the Kansas public speech protection act.

(b) Any action before the commission shall be brought within five years of the act giving rise to the cause of action or complaint.

(c) No action by the commission, including, but not limited to, the issuance of any consent order, order dismissing a complaint or any other preliminary or final order by the commission, shall require a respondent to waive any civil or legal rights to judicial recourse in any manner.

(d) The commission shall provide by rules and regulations the standards by which any member of the commission, the executive director or any other person employed or engaged by the commission shall recuse themselves from any matter before the commission by reason of a conflict of interest, appearance of impropriety or other basis affecting the ability of the commission to neutrally and fairly enforce the campaign finance act.

Sec. 2. K.S.A. 25-4143 is hereby amended to read as follows: 25-4143. As used in the

campaign finance act, unless the context otherwise requires:

(a) "Agent" means an individual who is:

(1) A candidate;

(2) a chairperson of a candidate, political or party committee;

(3) a treasurer; or

(4) any director, officer, employee, paid consultant or other person who is authorized to

act on behalf of persons listed in this subsection.

(b) "Candidate" means an individual who:

(1) Appoints a treasurer or a candidate committee;

(2) makes a public announcement of intention to seek nomination or election to state or local office;

(3) makes any expenditure or accepts any contribution for such person's nomination or election to any state or local office; or

(4) files a declaration or petition to become a candidate for state or local office.

~~(b)~~(c) "Candidate committee" means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.

~~(e)~~(d) "Clearly identified candidate" means a candidate who has been identified by the:

(1) Use of the name of the candidate;

(2) use of a photograph or drawing of the candidate; or

(3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.

~~(d)~~(e) "Commission" means the governmental ethics commission.

~~(e)~~(f) (1) "Contribution" means:

(A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office;

(B) any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) a transfer of funds between any two or more candidate committees, party committees or political committees;

(D) the payment, by any person other than a candidate, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee;

(E) the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events; or

(F) a mailing of materials designed to expressly advocate the nomination, election or defeat of a clearly identified candidate, which is made and paid for by a party committee with the consent of such candidate.

(2) "Contribution" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer related to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel

by personal automobile of the candidate or candidate's spouse while campaigning; or

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding a fair market value of \$50 per event.

~~(f)~~(g) "Election" means:

- (1) A primary or general election for state or local office; and
- (2) a convention or caucus of a political party held to nominate a candidate for state or local office.

~~(g)~~(h) (1) "Expenditure" means:

(A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made by a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office;:

(B) any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) any contract to make an expenditure;

(D) a transfer of funds between any two or more candidate committees, party committees or political committees; or

(E) payment of a candidate's filing fees.

(2) "Expenditure" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer incidental to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and

amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning or payment of such costs by the treasurer of a candidate or candidate committee;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding fair market value of \$50 per event; or

(E) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is to expressly advocate the nomination, election or defeat of a clearly identified candidate.

~~(h)~~(i) "Expressly advocate the nomination, election or defeat of a clearly identified candidate" means any communication ~~which~~ that uses phrases including, but not limited to:

- (1) "Vote for the secretary of state";
- (2) "re-elect your senator";
- (3) "support the democratic nominee";
- (4) "cast your ballot for the republican challenger for governor";
- (5) "Smith for senate";
- (6) "Bob Jones in '98";
- (7) "vote against Old Hickory";
- (8) "defeat" accompanied by a picture of one or more candidates; or
- (9) "Smith's the one."

~~(i)~~(j) "Party committee" means:

(1) The state committee of a political party regulated by article 3 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

(2) the county central committee or the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;

(3) the bona fide national organization or committee of those political parties regulated by the Kansas Statutes Annotated;

(4) ~~not more than one~~the political committee established by the state committee of any such political party and designated as a recognized political committee for the senate;

(5) ~~not more than one~~the political committee established by the state committee of any such political party and designated as a recognized political committee for the house of representatives; or

(6) ~~not more than one~~the political committee per congressional district established by the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, and designated as a congressional district party committee.

~~(j)~~(k) "Person" means any individual, committee, corporation, partnership, trust, organization or association.

~~(k)~~(l) (1) "Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.

(2) "Political committee" shall not include a candidate committee or a party committee.

~~(l)~~(m) "Receipt" means a contribution or any other money or thing of value, but not including volunteer services provided without compensation, received by a treasurer in the

treasurer's official capacity.

~~(m)~~(n) "State office" means any state office as defined in K.S.A. 25-2505, and amendments thereto.

~~(n)~~(o) "Testimonial event" means an event held for the benefit of an individual who is a candidate to raise contributions for such candidate's campaign. "~~Testimonial events include~~" includes, but are not limited to, dinners, luncheons, rallies, barbecues and picnics.

~~(o)~~(p) "Treasurer" means a treasurer of a candidate or of a candidate committee, a party committee or a political committee appointed under the campaign finance act or a treasurer of a combination of individuals or a person other than an individual which is subject to ~~paragraph (2)~~ of ~~subsection (a)~~ of K.S.A. 25-4172(a)(2), and amendments thereto.

~~(p)~~(q) "Local office" means a member of the governing body of a city of the first class, any elected office of a unified school district having 35,000 or more pupils regularly enrolled in the preceding school year, a county or of the board of public utilities.

Sec. 3. K.S.A. 25-4145 is hereby amended to read as follows: 25-4145. (a) Each party committee and each political committee which anticipates receiving contributions or making expenditures shall appoint a chairperson and a treasurer. The chairperson of each party committee and each political committee which anticipates receiving contributions or making expenditures for a candidate for state office shall make a statement of organization and file it with the secretary of state not later than 10 days after establishment of such committee. The chairperson of each political committee which anticipates receiving contributions or making expenditures for any candidate for local office, shall make a statement of organization and file it with the county election officer not later than 10 days after establishment of such committee.

(b) Every statement of organization shall include:

(1) The name and address of the committee. The name of the committee shall reflect the full name of the organization with which the committee is connected or affiliated or sufficiently describe such affiliation. If the political committee is not connected or affiliated with any one organization, the name shall reflect the trade, profession or primary interest of the committee as reflected by the statement of purpose of such organization;

(2) the names, addresses and email addresses, which such email addresses shall be optional, of the chairperson and treasurer of the committee;

(3) the names and addresses of affiliated or connected organizations; and

(4) in the case of a political committee, the full name of the organization with which the committee is connected or affiliated or, name or description sufficiently describing the affiliation or, if the committee is not connected or affiliated with any one organization, the trade, profession or primary interest of the political committee as reflected by the statement of purpose of such organization.

(c) Any change in information previously reported in a statement of organization shall be reported on a supplemental statement of organization and filed not later than 10 days following the change.

(d) (1) Each political committee which anticipates receiving contributions shall register annually with the commission on or before July 1 of each year. Each political committee registration shall be in the form and contain such information as may be required by the commission.

(2) Each registration by a political committee anticipating the receipt of more than \$15,000 in any calendar year shall be accompanied by an annual registration fee of \$750.

(3) Each registration by a political committee anticipating the receipt of ~~\$2,501~~ or more

than \$7,500 but less than \$15,001 in any calendar year shall be accompanied by an annual registration fee of ~~\$300~~\$500.

~~(3)~~(4) Each registration by a political committee anticipating the receipt of more than ~~\$500~~\$2,500 but less than ~~\$2,501~~\$7,501 in any calendar year shall be accompanied by an annual registration fee of ~~\$50~~\$250.

~~(4)~~(5) Each registration by a political committee anticipating the receipt of ~~\$500~~\$2,500 or less in any calendar year shall be accompanied by an annual registration fee of ~~\$25~~\$50.

~~(5)~~(6) Any political committee ~~which that~~ is currently registered under subsection ~~(d)~~(3) ~~(d)(4) or (d)(4), (d)(5)~~ and ~~which that~~ receives contributions in excess of ~~\$2,500~~ the registered amount for a calendar year, shall file, within three days of the date when contributions exceed such amount, an amended registration form ~~which that~~ shall be accompanied by an additional fee for such year equal to the difference between ~~\$300~~ the fee owed and the amount of the fee that accompanied the current registration.

~~(6)~~ ~~Any political committee which is currently registered under subsection (d)(4) and which receives contributions in excess of \$500 but which are less than \$2,501, shall file, within three days of the date when contributions exceed \$500, an amended registration form which shall be accompanied by an additional fee of \$25 for such year.~~

(e) All such fees received by or for the commission 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 governmental ethics commission fee fund.

Sec. 4. K.S.A. 25-4153a is hereby amended to read as follows: 25-4153a. (a) No registered lobbyist, political committee or person, other than an individual, shall make a

contribution after January 1 of each year and prior to adjournment sine die of the regular session of the legislature or at any other time in which the legislature is in session to a:

- (1) Legislator;
- (2) candidate for membership in the legislature;
- (3) state officer elected on a statewide basis;
- (4) candidate for state officer elected on a statewide basis;
- (5) candidate committee of persons described in paragraphs (1) through (4); or
- (6) political committee established by a state committee of any political party and

designated as a recognized political committee for the senate or house of representatives.

(b) No legislator, officer, candidate or committee described in subsection (a)(1) through (6) shall accept or knowingly solicit any contribution as defined by K.S.A. 25-4143, and amendments thereto, from any registered lobbyist, political committee or person, other than an individual, during such period of time described in subsection (a), except that a general public solicitation which does not solicit a specific individual and is distributed via social media shall be permissible. No solicitation shall be considered a violation of this act if such solicitation is accompanied with a disclaimer that it is not intended for lobbyists, political committees or persons other than individuals.

(c) For the purposes of this act, "social media" means an electronic medium which allows users to create and view user-generated content, including, but not limited to, uploaded or downloaded videos or photographs, blogs, audio files, instant messages or email.

Sec. 5. K.S.A. 25-4157a is hereby amended to read as follows: 25-4157a. (a) (1) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no

such moneys shall be used by such candidate or the candidate committee of such candidate except for:

~~(1)~~(A) Legitimate campaign purposes;

~~(2)~~(B) expenses of holding political office;

~~(3)~~(C) contributions to the party committees of the political party of which such candidate is a member;

~~(4)~~(D) any membership dues related to the candidate's campaign paid to a community service or civic organization in the name of the candidate;

~~(5)~~(E) any donations paid to any organization which is recognized as a 501(c)(3) tax exempt organization or any religious organization, community service or civic organization in the name of the candidate or candidate committee of any candidate but only if the candidate receives no goods or services unrelated to the candidate's campaign as a result of the payment of such donations;

~~(6)~~(F) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community;~~or~~

~~(7)~~(G) expenses incurred in the purchase and mailing of greeting cards to voters and constituents;

(H) expenses, compensation or gifts provided to any volunteer, staff member or contractor of the candidate's campaign or provided to any volunteer or staff of the candidate's political office if the total amount of such expenses, compensation or gifts provided to such persons from all sources does not exceed the total fair market value of services provided to the candidate's campaign or political office;

(I) payment of any civil penalty or fine imposed by the commission pursuant to this act related to the candidate's campaign and that is incurred by the candidate, candidate committee, treasurer or other agent of the candidate; or

(J) payment of legal fees related to any investigation or action under this act.

(2) For the purpose of this subsection, expenditures for "personal use" ~~shall include~~ includes expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No moneys received by any candidate or candidate committee of any candidate as a contribution shall be used to pay interest or any other finance charges upon moneys loaned to the campaign by such candidate or the spouse of such candidate.

(c) No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit a candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement.

(d) At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds otherwise not obligated for the payment of expenses incurred in such campaign or the

holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state.

Sec. 6. K.S.A. 25-4158 is hereby amended to read as follows: 25-4158. (a) The secretary of state shall:

(1) Furnish forms prescribed and provided by the commission for making reports and statements required to be filed in the office of the secretary of state by the campaign finance act; and

(2) make such reports and statements available for public inspection and copying during regular office hours.

(b) The county election officer shall:

(1) Furnish forms prescribed and provided by the commission for making reports and statements required to be filed in the office of the county election officer by the campaign finance act; and

(2) make such reports and statements available for public inspection and copying during regular office hours.

(c) The commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of the campaign finance act, or any matter to which the campaign finance act applies irrespective of whether a complaint has been filed in relation thereto.

(d) (1) After a preliminary investigation of any matter reported to the commission pursuant to subsection (c), and upon specific written findings of fact and conclusions of law by the commission that there is a reasonable suspicion that a violation of the campaign finance act

has occurred, the commission or any officer designated by the commission may apply to the district court of Shawnee county for an order to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the investigation. All applications for a court order shall be made under seal of the court. The commission shall reimburse the reasonable costs of production of documents subject to subpoena. All subpoenas and subpoenas duces tecum issued under this section shall be authorized by the affirmative vote of not less than ~~$\frac{3}{4}$~~ $\frac{2}{3}$ of the members of the commission. ~~Any vote authorizing the issuance of a subpoena or subpoena duces tecum shall be taken at a meeting where the commissioners are in physical presence.~~ Subpoenas duces tecum shall be limited to items reasonably relevant to such alleged violations. ~~Upon the request of any person subpoenaed to appear and give testimony or to produce books, papers or documents, the commission shall provide a copy of the written findings of facts and conclusions of laws relating to the alleged violation committed by such person.~~ No subpoena or other process issued by the commission pursuant to this section shall be served upon any person unless an application has been filed in the district court of Shawnee county pursuant to this section.

(2) ~~In case of contumacy by, or refusal to obey a subpoena issued to any person, the district court of Shawnee county, upon application by the commission, or any officer designated by the commission, may~~ Upon application by the commission or any officer designated by the commission for a court order pursuant to paragraph (1), the district court of Shawnee county, after review of the sufficiency of the written findings of fact and conclusions of law, the record before the commission and the reasonableness and scope of the subpoena, shall issue to that person an order requiring the person to appear before the commission or any officer designated

by the commission, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court. Upon the filing of an application for a court order pursuant to paragraph (1), the commission shall provide a copy of the written findings of fact and conclusions of law relating to the alleged violation and persons under investigation along with a copy of the issued subpoena and notices required by paragraph (5) to the recipient of the subpoena.

(3) The commission shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. Any person subject to a subpoena shall be informed that such person may apply to the district court for relief on the basis that responding to the subpoena will cause an undue burden or expense. The district court on review of any such application for relief, may impose an appropriate sanction on the commission including an order requiring the commission to reimburse the person for lost earnings and attorney fees.

(4) Any person subpoenaed to testify or produce documents under this section shall be informed that the person has a right to be advised by counsel and that the person may not be required to make any self-incriminating statements. Upon a request by such person for counsel, no further examination of the witness shall take place until counsel is present. In the event that counsel of the witness' choice is not available, the person shall be required to obtain other counsel within three days in order that the examination may proceed. If such person is indigent and unable to obtain the services of counsel, the judge shall appoint counsel to assist the person who shall be compensated as counsel appointed for indigent defendants in the district court. Counsel for any witness shall be present while the witness is testifying and may interpose objections on behalf of the witness. Counsel shall not be permitted to examine or cross-examine

the client or any other witness during the examination.

(5) Every subpoena issued by the commission pursuant to paragraph (1) shall be accompanied by a notice containing the information required to be provided under paragraphs (3) and (4) and the following statement: "This subpoena is not enforceable unless a district court of competent jurisdiction issues an order to enforce the subpoena. The recipient of this subpoena has rights under law including those listed in K.S.A. 25-4158(d)(3), and amendments thereto, and other laws to seek relief from complying with this subpoena, as well as a right to be represented by counsel in this matter pursuant to K.S.A. 25-4158(d)(4), and amendments thereto."

Sec. 7. K.S.A. 25-4161 is hereby amended to read as follows: 25-4161. (a) If a complaint is filed and the commission determines that such verified complaint does not allege facts, directly or upon information and belief, sufficient to constitute a violation of any provision of the campaign finance act, it shall dismiss the complaint and notify the complainant and respondent thereof.

(b) Whenever a complaint is filed with the commission alleging a violation of a provision of the campaign finance act, such filing and the allegations therein shall be confidential and shall not be disclosed except as provided in the campaign finance act.

(c) If a complaint is filed and the commission determines that such verified complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of the campaign finance act, the commission shall promptly investigate the alleged violation.

(d) The commission shall notify the attorney general of any apparent violation of criminal law or other laws not administered by the commission, which is discovered during the

course of any such investigation.

(e) If after the investigation, the commission finds that probable cause does not exist for believing the allegations of the complaint, the commission shall dismiss the complaint. If after such investigation, the commission finds by an affirmative vote of not less than $\frac{2}{3}$ of the members of the commission that probable cause exists for believing the allegations of the complaint, such complaint shall no longer be confidential and may be disclosed. Upon making any such finding, ~~the commission shall fix a time for a hearing of the matter, which shall be not more than 30 days after such finding~~ a hearing shall be ordered pursuant to this act. In either event the commission shall notify the complainant and respondent of its determination.

(f) The remedies and protections provided by K.S.A. 75-2973, and amendments thereto, shall be available to any state employee against whom disciplinary action has been taken for filing a complaint pursuant to this act.

(g) Any attorney or staff member representing the complainant before the commission in any matter shall not engage in ex parte communications with or otherwise advise, represent or assist the commission regarding the same or related matter before the commission. The commission shall obtain separate independent legal counsel when needed to comply with this section.

(h) (1) All hearings conducted under this act shall be in accordance with the provisions of the Kansas administrative procedure act and the Kansas code of civil procedure. Upon the request of the respondent, any hearing held under this act may be removed for hearing before a presiding officer from the office of administrative hearings. The commission shall review an initial order resulting from a hearing under this section.

(2) The commission is hereby authorized to enter into a contract with 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.

(i) The duties of confidentiality under this section shall apply only to members of the commission, the executive director or any person employed or engaged by the commission.

Sec. 8. K.S.A. 25-4163 is hereby amended to read as follows: 25-4163. (a) After a verified complaint alleging violation of a provision of the campaign finance act has been filed with the commission, the respondent shall be entitled to examine and make copies of all evidence in the possession of the commission relating to the complaint, including the transcript of the hearing, if any. If a hearing is to be held pursuant to K.S.A. 25-4161, and amendments thereto, then a subcommittee of the commission or the presiding officer, before the hearing has commenced, shall issue subpoenas and subpoenas duces tecum at the request of any party. The commission shall reimburse the reasonable costs of production of documents subject to subpoena. Any hearing held under K.S.A. 25-4161, and amendments thereto, may be conducted and held by a subcommittee of not less than five members of the commission, of whom not more than a majority shall be of the same political party. Upon a request by a respondent that the hearing be held before a presiding officer from the office of administrative hearings, all pre-hearing procedures shall be conducted by such presiding officer. The hearing shall be conducted in the manner prescribed by the Kansas administrative procedure act. Final determination of all complaints shall be made by the commission as a whole. ~~The chairperson of the commission or other member presiding over the commission or the presiding member of any subcommittee of the commission shall have the power to: (1) Administer oaths and affirmations; and (2) compel, by subpoena, the attendance of witnesses and the production of pertinent books, papers and documents. Witnesses shall be entitled to receive fees and mileage as provided by law for~~

~~witnesses in civil actions, which shall be paid out of appropriations to the commission. Depositions may be taken and used in the same manner as in civil actions. Any person subpoenaed to appear and give testimony or to produce books, papers or documents, who fails or refuses to appear or to produce such books, papers or documents, or any person, having been sworn to testify, who refuses to answer any proper question, may be cited for contempt of the district court of Shawnee county, Kansas. The commission shall report to such court the facts relating to any such contempt. Thereupon proceedings before such court shall be had as in cases of other civil contempt. The commission shall not conduct another hearing on the matter but shall make final determination based on the record of the hearing before the presiding officer or subcommittee of the commission.~~

(b) ~~At every hearing held by the commission under this act:~~

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to be represented by legal counsel, to call and examine witnesses, to introduce evidence and to cross-examine opposing witnesses.

(3) The provisions of K.S.A. 25-4161(g), and amendments thereto, shall apply to legal counsel representing a complainant employed or engaged by the commission.

(c) All hearings shall be open to the public.

Sec. 9. K.S.A. 25-4165 is hereby amended to read as follows: 25-4165. (a) The commission shall maintain a record of its investigations, inquiries, and proceedings. All records, complaints, documents, reports filed with or submitted to or made by the commission, and all records and transcripts of any investigations, inquiries or hearings of the commission under the campaign finance act shall be confidential and shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or

employee designated to assist the commission, except as otherwise specifically provided in the campaign finance act. The commission may, by adoption of a resolution, authorize the release to the attorney general or to the county or district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the attorney general or any county or district attorney. All matters presented at a public hearing of the commission and all reports of the commission stating a final finding of fact pursuant to K.S.A. 25-4164, and amendments thereto, shall be public records and open to public inspection.

(b) The duties under this section shall apply only to members of the commission, the executive director or any person employed or engaged by the commission.

Sec. 10. K.S.A. 25-4181 is hereby amended to read as follows: 25-4181. (a) The commission, in addition to any other penalty prescribed under the campaign finance act, may assess a civil fine, after proper notice and an opportunity to be heard, against any person for a violation of the campaign finance act in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. Except as otherwise provided, the fine imposed by the commission in any one matter shall not exceed an amount that is triple the applicable fine for a single violation in such matter. In the event the respondent derived pecuniary gain from the specific violations, then, in lieu of the above fine amounts, the fine imposed may be fixed at an amount greater than that provided in this section, but in no event shall such amount exceed double the pecuniary gain derived from the violation by the respondent. Nothing in this section shall prevent the imposition of a separate fine by a court in a criminal proceeding. Whenever any civil fine or penalty is proposed to be assessed against the treasurer of any candidate who is not also the candidate, such notice shall be

given to both the treasurer and the candidate prior to the assessment of such fine or penalty. 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 ~~governmental ethics commission fee~~ state general fund.

(b) No individual who has failed to pay any civil penalty or civil fine assessed, or failed to file any report required to be filed under the campaign finance act, unless such penalty or fine has been waived or is under appeal, shall be eligible to become a candidate for state office or local office until such penalty or fine has been paid or such report has been filed or both such penalty or fine has been paid and such report filed.

(c) The commission shall not order community service or any other specific performance in lieu of a civil fine as part of a consent decree or final order. Nothing in this section shall prohibit the commission from requiring training regarding or compliance with any provision of this act as part of a consent decree or final order.

(d) The commission shall not enter into any agreement with any person that legally binds the commission from enforcing any law against that person in exchange for the person's cooperation with or assistance of the commission in any matter unless such person has received immunity from criminal prosecution in the same matter from a county or district attorney or the attorney general pursuant to K.S.A. 22-3415, and amendments thereto.

Sec. 11. K.S.A. 25-4182 is hereby amended to read as follows: 25-4182. (a) If the commission determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of the campaign finance act or any rule and regulation or order hereunder, the commission by order 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 commission will carry out the purposes of such act.

(b) If the commission makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commission 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 commission shall promptly notify the person subject to the order that it has been entered, of the reasons therefor and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon the request of the respondent, any hearing held under this act may be removed for hearing before a presiding officer from the office of administrative hearings as provided in K.S.A. 25-4161, and amendments thereto. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order. Any such order shall be enforceable in any court of competent jurisdiction.

Sec. 12. K.S.A. 25-4143, 25-4145, 25-4153a, 25-4157a, 25-4158, 25-4161, 25-4163, 25-4165, 25-4181 and 25-4182 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.