

**HOUSE BILL No. 2185**

By Committee on Local Government

2-7

1 AN ACT concerning openness in government; amending K.S.A. 45-223  
2 and 75-4320a and K.S.A. 2010 Supp. 75-4320 and 75-4320b and  
3 repealing the existing sections.  
4

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

6 Section 1. K.S.A. 45-223 is hereby amended to read as follows: 45-  
7 223. (a) Any public agency subject to this act that knowingly violates any  
8 of the provisions of this act or that intentionally fails to furnish  
9 information as required by this act shall be liable for the payment of a  
10 civil penalty in an action brought by *any person*, the attorney general or  
11 county or district attorney, in a sum set by the court of not to exceed \$500  
12 for each violation.

13 (b) Any civil penalty sued for and recovered hereunder by *any*  
14 *person*, the attorney general shall be paid into the state general fund. Any  
15 civil penalty sued for and recovered hereunder by a county or district  
16 attorney shall be paid into the general fund of the county in which the  
17 proceedings were instigated.

18 Sec. 2. K.S.A. 2010 Supp. 75-4320 is hereby amended to read as  
19 follows: 75-4320. (a) Any member of a body or agency subject to this act  
20 who knowingly violates any of the provisions of this act or who  
21 intentionally fails to furnish information as required by subsection (b) of  
22 K.S.A. 75-4318, and amendments thereto, shall be liable for the payment  
23 of a civil penalty in an action brought by *any person*, the attorney general  
24 or county or district attorney, in a sum set by the court of not to exceed  
25 \$500 for each violation. In addition, any binding action which is taken at  
26 a meeting not in substantial compliance with the provisions of this act  
27 shall be voidable in any action brought by *any person*, the attorney  
28 general or county or district attorney in the district court of the county in  
29 which the meeting was held within 21 days of the meeting, and the court  
30 shall have jurisdiction to issue injunctions or writs of mandamus to  
31 enforce the provisions of this act.

32 (b) Civil penalties sued for and recovered hereunder by *any person*,  
33 the attorney general shall be paid into the state general fund. Civil  
34 penalties sued for and recovered hereunder by a county or district  
35 attorney shall be paid into the general fund of the county where the  
36 proceedings were instigated.

1 (c) No fine shall be imposed pursuant to subsection (a) for violations  
2 of subsection (f) of K.S.A. 75-4318, and amendments thereto, which  
3 occur prior to July 1, 2009.

4 Sec. 3. K.S.A. 75-4320a is hereby amended to read as follows: 75-  
5 4320a. (a) The district court of any county in which a meeting is held  
6 shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-  
7 4319, and amendments thereto, with respect to such meeting, by  
8 injunction, mandamus or other appropriate order, on application of any  
9 person.

10 (b) In any action hereunder, the burden of proof shall be on the  
11 public body or agency to sustain its action.

12 (c) In any action hereunder, the court ~~may~~shall award court costs  
13 *and a reasonable sum as attorney fees for services rendered in such*  
14 *action, including proceedings on appeal, to be recovered and collected as*  
15 *part of the costs* to the person seeking to enforce the provisions of K.S.A.  
16 75-4318 or 75-4319, and amendments thereto, if the court finds that the  
17 provisions of those statutes were violated. The award shall be assessed  
18 against the public agency or body responsible for the violation.

19 (d) In any action hereunder in which the defendant is the prevailing  
20 party, the court may award to the defendant court costs if the court finds  
21 that the plaintiff maintained the action frivolously, not in good faith or  
22 without a reasonable basis in fact or law.

23 (e) Except as otherwise provided by law, proceedings arising under  
24 this section shall take precedence over all other cases and shall be  
25 assigned for hearing and trial at the earliest practicable date.

26 (f) As used in this section, "meeting" has the meaning provided by  
27 K.S.A. 75-4317a, and amendments thereto.

28 Sec. 4. K.S.A. 2010 Supp. 75-4320b is hereby amended to read as  
29 follows: 75-4320b. In investigating alleged violations of the Kansas open  
30 meetings act, *any person*, the attorney general or county or district  
31 attorney may:

32 (a) Subpoena witnesses, evidence, documents or other material;

33 (b) take testimony under oath;

34 (c) examine or cause to be examined any documentary material of  
35 whatever nature relevant to such alleged violations;

36 (d) require attendance during such examination of documentary  
37 material and take testimony under oath or acknowledgment in respect of  
38 any such documentary material; and

39 (e) serve interrogatories.

40 Sec. 5. K.S.A. 45-223 and 75-4320a and K.S.A. 2010 Supp. 75-4320  
41 and 75-4320b are hereby repealed.

42 Sec. 6. This act shall take effect and be in force from and after its  
43 publication in the statute book.

