

amendments thereto;

(C) complete training approved by the attorney general concerning the requirements of K.S.A. 45-215 et seq., and amendments thereto; and

(D) pay a civil penalty as provided for in K.S.A. 45-223, and amendments thereto, in an amount not to exceed \$500 for each violation.

(b) The attorney general may require submission of proof that requirements of any consent order entered pursuant to subsection (a)(1) or any finding of violation issued pursuant to subsection (a)(2) have been satisfied.

(c) (1) The attorney general may apply to the district court to enforce a consent order pursuant to subsection (a)(1) or finding of violation pursuant to subsection (a)(2). Prior to applying to the district court, the attorney general shall make a demand to the public agency to comply with the consent order or finding of violation and afford reasonable opportunity for the public agency to cure the violation.

(2) An enforcement action under this section may be filed in the district court of the county where the consent order or finding of violation is issued or is effective. The district court of any county shall have jurisdiction to enforce any consent order or finding of violation.

(3) In any enforcement action under this section, the court on its own motion, or on the motion of either party, may view the records in controversy in camera before reaching a decision.

(4) If the district court finds the attorney general did not abuse the attorney general's discretion in entering into the consent order or issuing the finding of violation, the district court shall enter an order that:

(A) Enjoins the public agency to comply with the consent order or finding of violation;

(B) imposes a civil penalty as provided for in K.S.A. 45-223, and amendments thereto. The penalty shall be set by the court in an amount not less than the amount ordered by the attorney general, nor more than \$500 for each violation;

(C) requires the public agency to pay the attorney general's reasonable costs in investigating and bringing an action to enforce the order, including reasonable attorney fees; and

(D) provides for any other remedy authorized by K.S.A. 45-222(a), and amendments thereto, that the court deems appropriate.

(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public agency;

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(e) The attorney general shall maintain and make available for public

Proposed Amendment to SB 206
For Committee on Judiciary
Prepared By: Katherine Goyette, Office of
Revisor of Statutes
March 19, 2015 00:26

court costs and costs
incurred in investigating
the violation

(5) In any enforcement action under this section, if the court finds that any of the provisions of K.S.A. 45-215 et seq., and amendments thereto, were violated, such court:

(A) Except as provided in subsection (c)(5)(B), may require the public agency to pay the attorney general's reasonable attorney fees; and

(B) shall require the public agency to pay the attorney general's reasonable attorney fees, if the public agency's violation was not made in good faith and without a reasonable basis in fact or law.

1 inspection all consent orders entered pursuant to subsection (a)(1) and all
2 findings of violation issued pursuant to subsection (a)(2).

3 (f) This section shall be a part of and supplemental to the open
4 records act.

5 New Sec. 2. (a) In lieu of bringing an action as provided in K.S.A.
6 45-222, and amendments thereto, the attorney general or a county or
7 district attorney may resolve the matter by accepting a consent judgment
8 with respect to any act or practice declared to be a violation of this act.
9 Before any consent judgment entered into pursuant to this section shall be
10 effective, such judgment must be approved by the district court and an
11 entry made thereof in the manner required for making an entry of
12 judgment. Once such approval is received, any breach of the conditions of
13 the consent judgment shall be treated as a violation of a court order, and
14 shall be subject to all the penalties provided by law therefor.

15 (b) A consent judgment may contain any remedy available to the
16 district court, except it shall not include an award of reasonable expenses,
17 investigation costs or attorney fees. A consent judgment may include a
18 stipulation concerning the production of records requested pursuant to
19 K.S.A. 45-215 et seq., and amendments thereto, subject to any permissible
20 redactions as described in the consent judgment.

21 (c) This section shall be a part of and supplemental to the open
22 records act.

23 New Sec. 3. (a) Any complaint submitted to the attorney general shall
24 be on a form prescribed by the attorney general setting forth the facts that
25 the complaining party believes show that K.S.A. 45-215 et seq., and
26 amendments thereto, have been violated. The person submitting the
27 complaint must attest to the facts under penalty of perjury pursuant to
28 K.S.A. 53-601, and amendments thereto.

29 (b) This section shall be a part of and supplemental to the open
30 records act.

31 New Sec. 4. (a) The attorney general may determine by a
32 preponderance of the evidence after an investigation that a public agency
33 has violated K.S.A. 75-4317 et seq., and amendments thereto, and may, at
34 any time prior to the filing of an action pursuant to K.S.A. 75-4320a, and
35 amendments thereto, either enter into a consent order with the public
36 agency or issue a finding of violation to the public agency.

37 (1) If the attorney general enters into a consent order with the public
38 agency, the consent order:

39 (A) May contain admissions of fact and any or all of the following:

40 (i) Require completion of training approved by the attorney general
41 concerning the requirements of K.S.A. 75-4317 et seq., and amendments
42 thereto;

43 (ii) impose a civil penalty as provided for in K.S.A. 75-4320, and

1 amendments thereto, in an amount not to exceed \$250 for each violation;
2 and

3 (iii) set forth the public agency's agreement that it will comply with
4 the requirements of the open meetings act, K.S.A. 75-4317 et seq., and
5 amendments thereto; and

6 (B) shall bear the signature of the head of the public agency, of any
7 officer found to have violated the provisions of K.S.A. 75-4317 et seq.,
8 and amendments thereto, and of any other person required by the attorney
9 general. ~~If the public agency is a governing body, all of the members of the~~
10 ~~governing body shall sign the consent order.~~

11 (2) If the attorney general issues a finding of violation to the public
12 agency, the finding may contain findings of fact and conclusions of law
13 and require the public agency to do any or all of the following:

14 (A) Cease and desist from further violation;

15 (B) comply with the provisions of K.S.A. 75-4317 et seq., and
16 amendments thereto;

17 (C) complete training approved by the attorney general concerning
18 the requirements of K.S.A. 75-4317 et seq., and amendments thereto; and
19 (D) pay a civil penalty as provided for in K.S.A. 75-4320, and
20 amendments thereto, in an amount not to exceed \$500 for each violation.

21 (b) The attorney general may require submission of proof that
22 requirements of any consent order entered pursuant to subsection (a)(1) or
23 any finding of violation issued pursuant to subsection (a)(2) have been
24 satisfied.

25 (c) (1) The attorney general may apply to the district court to enforce
26 a consent order pursuant to subsection (a)(1) or finding of violation
27 pursuant to subsection (a)(2). Prior to applying to the district court, the
28 attorney general shall make a demand to the public agency to comply with
29 the consent order or finding of violation and afford reasonable opportunity
30 for the public agency to cure the violation.

31 (2) An enforcement action under this section may be filed in the
32 district court of the county where the consent order or finding of violation
33 is issued or is effective. The district court of any county shall have
34 jurisdiction to enforce any consent order or finding of violation.

35 (3) If the district court finds the attorney general did not abuse the
36 attorney general's discretion in entering into the consent order or issuing
37 the finding of violation, the district court shall enter an order that:

38 (A) Enjoins the public agency to comply with the consent order or
39 finding of violation;

40 (B) imposes a civil penalty as provided for in K.S.A. 75-4320, and
41 amendments thereto. The penalty shall be set by the court in an amount not
42 less than the amount ordered by the attorney general, nor more than \$500
43 for each violation;

(C) requires the public agency to pay the attorney general's reasonable costs in investigating and bringing an action to enforce the order, including reasonable attorney fees; and

(D) provides for any other remedy authorized by K.S.A. 75-4320a(a), and amendments thereto, that the court deems appropriate.

(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public agency:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(e) The attorney general shall maintain and make available for public inspection all consent orders entered pursuant to subsection (a)(1) and all findings of violation issued pursuant to subsection (a)(2).

(f) This section shall be a part of and supplemental to the open meetings act.

New Sec. 5. (a) In lieu of bringing an action as provided in K.S.A. 75-4320a, and amendments thereto, the attorney general or a county or district attorney may resolve the matter by accepting a consent judgment with respect to any act or practice declared to be a violation of this act. Before any consent judgment entered into pursuant to this section shall be effective, such judgment must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of the consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(b) A consent judgment may contain any remedy available to the district court, except it shall not include an award of reasonable expenses, investigation costs or attorney fees.

(c) This section shall be a part of and supplemental to the open meetings act.

New Sec. 6. (a) Any complaint submitted to the attorney general shall be on a form prescribed by the attorney general setting forth the facts that the complaining party believes show that K.S.A. 75-4317 et seq., and amendments thereto, have been violated. The person submitting the complaint must attest to the facts under penalty of perjury pursuant to K.S.A. 53-601, and amendments thereto.

(b) This section shall be a part of and supplemental to the open meetings act.

New Sec. 7. (a) There is hereby created in the state treasury the attorney general's open government fund. Moneys in the attorney general's open government fund shall be used by the attorney general to carry out the provisions and purposes of the open records act, K.S.A. 45-215 et seq.,

court costs and costs incurred in investigating the violation

(4) In any enforcement action under this section, if the court finds that any of the provisions of K.S.A. 75-4317 et seq., and amendments thereto, were violated, such court:

(A) Except as provided in subsection (c)(4)(B), may require the public agency to pay the attorney general's reasonable attorney fees; and
(B) shall require the public agency to pay the attorney general's reasonable attorney fees, if the public agency's violation was not made in good faith and without a reasonable basis in fact or law.