

SENATE BILL No. 206

By Committee on Federal and State Affairs

2-11

SB206-Balloon-AG
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Office of Revisor of Statutes
February 23, 2015

1 AN ACT concerning public agencies; relating to the state of Kansas and
2 local units of government; providing certain powers to the attorney
3 general for investigation of violations of the open records act and the
4 open meetings act; open government fund; amending K.S.A. 45-223,
5 45-228 and 75-4320a and K.S.A. 2014 Supp. 45-222, 75-4320 and 75-
6 4320b and repealing the existing sections.
7

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

9 New Section 1. (a) The attorney general may determine by a
10 preponderance of the evidence after an investigation that a public agency
11 has violated K.S.A. 45-215 et seq., and amendments thereto, and may, at
12 any time prior to the filing of an action pursuant to K.S.A. 45-222, and
13 amendments thereto, either enter into a consent order with the public
14 agency or issue a finding of violation to the public agency.

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

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

18 (i) Require completion of training approved by the attorney general
19 concerning the requirements of K.S.A. 45-215 et seq., and amendments
20 thereto;

21 (ii) Impose a civil penalty as provided for in K.S.A. 45-223, and
22 amendments thereto, in an amount not to exceed \$250 for each violation;
23 and

24 (iii) set forth the public agency's agreement that it will comply with
25 the requirements of the open records act, K.S.A. 45-215 et seq., and
26 amendments thereto; and

27 (B) shall bear the signature of the head of the public agency, of any
28 officer found to have violated the provisions of K.S.A. 45-215 et seq., and
29 amendments thereto, and of any other person required by the attorney
30 general. If the public agency is a governing body, all of the members of the
31 governing body shall sign the consent order.

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

35 (A) Cease and desist from further violation;

36 (B) comply with the provisions of K.S.A. 45-215 et seq., and

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;

Strike "If ... order."
in lines 9-10

1 provides the requested response for information, records or other
2 materials, responds to the interrogatories or obeys the subpoena.

3 Sec. 13. K.S.A. 2014 Supp. 75-4320 is hereby amended to read as
4 follows: 75-4320. (a) Any member of a body or agency subject to this act
5 who knowingly violates any of the provisions of this act or who
6 intentionally fails to furnish information as required by ~~subsection (b) of~~
7 K.S.A. 75-4318(b), and amendments thereto, shall be liable for the
8 payment of a civil penalty in an action brought by the attorney general or
9 county or district attorney, in a sum set by the court of not to exceed \$500
10 for each violation. In addition, any binding action which is taken at a
11 meeting not in substantial compliance with the provisions of this act shall
12 be voidable in any action brought by the attorney general or county or
13 district attorney in the district court of the county in which the meeting
14 was held within 21 days of the meeting, and the court shall have
15 jurisdiction to issue injunctions or writs of mandamus to enforce the
16 provisions of this act.

17 (b) Civil penalties sued for and recovered hereunder by the attorney
18 general shall be paid into the ~~state general~~ attorney general's open
19 government fund. Civil penalties sued for and recovered hereunder by a
20 county or district attorney shall be paid into the general fund of the county
21 where the proceedings were instigated.

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

25 Sec. 14. K.S.A. 75-4320a is hereby amended to read as follows: 75-
26 4320a. (a) The district court of any county in which a meeting is held shall
27 have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319,
28 and amendments thereto, with respect to such meeting, by injunction,
29 mandamus declaratory judgment or other appropriate order, on application
30 of any person. *The district court may require a defendant to complete*
31 *training approved by the attorney general concerning the requirements of*
32 *the open meetings act.*

33 (b) In any action hereunder or under section 4, and amendments
34 thereto, the burden of proof shall be on the public body or agency to
35 sustain its action.

36 (c) In any action hereunder, the court may award court costs to the
37 person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319,
38 and amendments thereto, if the court finds that the provisions of those
39 statutes were violated. The award shall be assessed against the public
40 agency or body responsible for the violation.

41 (d) In any action hereunder in which the defendant is the prevailing
42 party, the court may award to the defendant court costs if the court finds
43 that the plaintiff maintained the action frivolously, not in good faith or

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