

**As Amended by House Committee**

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*As Amended by Senate Committee*

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*Session of 2015*

**SENATE BILL No. 19**

By Committee on Judiciary

1-13

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1 AN ACT concerning administrative procedure; relating to the Kansas  
2 administrative procedure act; Kansas judicial review act; amending  
3 K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and K.S.A. ~~2014~~  
4 **2015** Supp. 77-519, 77-521 and 77-531 and repealing the existing  
5 sections.  
6

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

8 Section 1. K.S.A. 77-502 is hereby amended to read as follows: 77-  
9 502. As used in this act:

10 (a) "State agency" means any officer, department, bureau, division,  
11 board, authority, agency, commission or institution of this state, except the  
12 judicial and legislative branches of state government and political  
13 subdivisions of the state, which is authorized by law to administer, enforce  
14 or interpret any law of this state.

15 (b) "Agency head" means an individual or body of individuals in  
16 whom the ultimate legal authority of the state agency is vested by any  
17 provision of law.

18 (c) "License" means a franchise, permit, certification, approval,  
19 registration, charter or similar form of authorization required by law for a  
20 person to engage in a profession or occupation.

21 (d) "Order" means a state agency action of particular applicability  
22 that determines the legal rights, duties, privileges, immunities or other  
23 legal interest of one or more specific persons.

24 (e) "Party to state agency proceedings," or "party" in context so  
25 indicating, means:

26 (1) A person to whom an order is specifically directed; or

27 (2) a person named as a party to a state agency proceeding or allowed  
28 to intervene as a party in the proceeding.

29 (f) "Person" means an individual, partnership, corporation,  
30 association, political subdivision or unit thereof or public or private  
31 organization or entity of any character, and includes another state agency.

32 (g) "Political subdivision" means political or taxing subdivisions of  
33 the state, including boards, commissions, authorities, councils,  
34 committees, subcommittees and other subordinate groups or administrative

1 units thereof, receiving or expending and supported in whole or in part by  
2 public funds;

3 (h) "Writing," "written," or "in writing" means any worded or  
4 numbered expression that can be read, reproduced and later  
5 communicated, and includes electronically transmitted and stored  
6 information.

7 Sec. 2. K.S.A.-2014 **2015** Supp. 77-519 is hereby amended to read as  
8 follows: 77-519. (a) The presiding officer, at appropriate stages of the  
9 proceedings, shall give all parties full opportunity to file pleadings,  
10 objections and motions, including, but not limited to, motions to dismiss  
11 and motions for summary judgment.

12 (b) The presiding officer, at appropriate stages of the proceedings,  
13 may give all parties full opportunity to file briefs, proposed findings of fact  
14 and conclusions of law and proposed initial or final orders.

15 (c) A party shall serve copies of any filed item on all parties, by mail  
16 or any other means, *including electronic means, if the party to be served*  
17 *has consented to service by electronic means*, prescribed by state agency  
18 rule and regulation or by the presiding officer.

19 Sec. 3. K.S.A.-2014 **2015** Supp. 77-521 is hereby amended to read as  
20 follows: 77-521. (a) The presiding officer shall grant a petition for  
21 intervention if:

22 (1) The petition is submitted in writing to the presiding officer, with  
23 copies ~~mailed to~~ *served upon* all parties named in the presiding officer's  
24 notice of the hearing, at least three business days before the hearing;

25 (2) the petition states facts demonstrating that the petitioner's legal  
26 rights, duties, privileges, immunities or other legal interests may be  
27 substantially affected by the proceeding or that the petitioner qualifies as  
28 an intervener under any provision of law; and

29 (3) the presiding officer determines that the interests of justice and  
30 the orderly and prompt conduct of the proceedings will not be impaired by  
31 allowing the intervention.

32 (b) The presiding officer may grant a petition for intervention at any  
33 time upon determining that the intervention sought is in the interests of  
34 justice and will not impair the orderly and prompt conduct of the  
35 proceedings.

36 (c) If a petitioner qualifies for intervention, the presiding officer may  
37 impose conditions upon the intervener's participation in the proceedings,  
38 either at the time that intervention is granted or at any subsequent time.  
39 Conditions may include:

40 (1) Limiting the intervener's participation to designated issues in  
41 which the intervener has a particular interest demonstrated by the petition;

42 (2) limiting the intervener's use of discovery, cross-examination and  
43 other procedures so as to promote the orderly and prompt conduct of the

1 proceedings; and

2 (3) requiring two or more interveners to combine their presentations  
3 of evidence and argument, cross-examination, discovery and other  
4 participation in the proceedings.

5 (d) The presiding officer, at least one business day before the hearing,  
6 shall issue an order granting or denying each pending petition for  
7 intervention, specifying any conditions and briefly stating the reasons for  
8 the order. The presiding officer may modify the order at any time, stating  
9 the reasons for the modification. The presiding officer shall promptly give  
10 notice of an order granting, denying or modifying intervention to the  
11 petitioner for intervention and to all parties.

12 Sec. 4. K.S.A.-~~2014~~ **2015** Supp. 77-531 is hereby amended to read as  
13 follows: 77-531. (a) Service of an order or notice shall be made upon the  
14 party and the party's attorney of record, if any, by:

15 (1) Delivering a copy of the order or notice to the person to be served  
16 ~~or by;~~

17 (2) mailing a copy of the order or notice to the person at the person's  
18 last known address; *or*

19 (3) ~~sending~~ **transmitting** a copy of the order or notice to the person  
20 *by electronic means, if such person has consented to service by electronic*  
21 *means.*

22 (b) Service shall be presumed if the presiding officer, or a person  
23 directed to make service by the presiding officer, makes a written  
24 certificate of service. Delivery of a copy of an order or notice means  
25 handing the order or notice to the person or leaving the order or notice at  
26 the person's principal place of business or residence with a person of  
27 suitable age and discretion who works or resides therein. Service by mail  
28 is complete upon mailing. *Service by electronic means is complete upon*  
29 *transmission or as otherwise specified in the consent. Any consent to*  
30 *electronic service shall specify when such service is complete.* Whenever a  
31 party has the right or is required to do some act or take some proceedings  
32 within a prescribed period after service of a notice or order and the notice  
33 or order is served by mail *or electronic means*, three days shall be added to  
34 the prescribed period.

35 Sec. 5. K.S.A. 77-545 is hereby amended to read as follows: 77-545.

36 (a) This section applies to adjudicative proceedings before the state  
37 corporation commission.

38 (b) (1) After the commission has determined and announced that a  
39 hearing should be held, and prior to the issuance of a final order, no parties  
40 to the proceeding, or their counsel, shall discuss the merits of the matter or  
41 proceeding with the presiding officer unless reasonable notice is given to  
42 all parties who have appeared to enable the parties to be present at the  
43 conference.

1 (2) After the commission has determined and announced that a  
2 hearing should be held, prior to the issuance of a final order, copies of any  
3 written communications from any party regarding the proceeding that are  
4 directed to the presiding officer shall be ~~mailed to~~ *served upon* all parties  
5 of record and proof of service shall be furnished to the commission.  
6 Communications requested by members of the commission staff from any  
7 party and any written communications received by members of the  
8 commission staff from any party shall be made a part of the file and the  
9 docket and shall be made available to all persons who desire to use them,  
10 provided that all commission requests for information from a party shall be  
11 ~~mailed to~~ *served upon* all parties of record.

12 (3) The person or persons to whom any ex parte communication has  
13 been made shall promptly and fully inform the full commission of the  
14 substance of the communication, and the circumstances thereof, to enable  
15 the commission to take appropriate action.

16 (c) For purposes of this section, no member of the technical staff shall  
17 be considered a party to any proceeding before the commission, regardless  
18 of participation in staff investigations with respect to the proceeding or of  
19 participation in the proceeding as a witness. Since the purpose of the staff  
20 is to aid the commission in the proper discharge of commission duties, the  
21 presiding officers shall be free at all times to confer with any staff member  
22 with respect to any proceeding. However, no facts that are outside the  
23 record, and that reasonably could be expected to influence the decision in  
24 any matter pending before the commission, shall be furnished to any  
25 presiding officer unless all parties to the proceeding are likewise informed  
26 and afforded a reasonable opportunity to respond. Subsection (b) shall  
27 apply to staff counsel in regard to any adjudicatory proceeding before the  
28 commission.

29 (d) All letters and written communications that are received by the  
30 presiding officer from members of the general public, and that are in the  
31 nature of ex parte communications, shall be made a part of the file in the  
32 docket and shall be made available to all persons who desire to see them.  
33 The deposit of such written communications and letters in the file shall not  
34 make them a part of the official record of the case.

35 Sec. 6. K.S.A. 77-546 is hereby amended to read as follows: 77-546.

36 (a) This section applies to adjudicative proceedings before the  
37 commissioner of insurance concerning any rate, or any rule, regulation or  
38 practice pertaining to the rates over which the commissioner has  
39 jurisdiction and adjudicative proceedings held pursuant to the Kansas  
40 insurance holding companies act.

41 (b) (1) After the commissioner has determined and announced that a  
42 hearing should be held, and prior to the issuance of a final order, no parties  
43 to the proceeding, or their counsel, shall discuss the merits of the matter or

1 proceeding with the presiding officer unless reasonable notice is given to  
2 all parties who have appeared to enable the parties to be present at the  
3 conference.

4 (2) After the commissioner has determined and announced that a  
5 hearing should be held, prior to the issuance of a final order, copies of any  
6 written communications from any party regarding the proceeding that are  
7 directed to the presiding officer shall be ~~mailed to~~ *served upon* all parties  
8 of record and proof of service shall be furnished to the commissioner.  
9 Communications requested by the commissioner's staff from any party and  
10 any written communication received by the commissioner's staff from any  
11 party shall be made a part of the file and the docket and shall be made  
12 available to all persons who desire to use them, provided that the  
13 commissioner's requests for information from a party shall be mailed to all  
14 parties of record.

15 (3) The person or persons to whom any ex parte communication has  
16 been made shall promptly and fully inform the commissioner of the  
17 substance of the communication, and the circumstances thereof, to enable  
18 the commissioner to take appropriate action.

19 (c) For purposes of this section, no member of the commissioner's  
20 technical staff shall be considered a party to any proceeding before the  
21 commissioner, regardless of participation in staff investigations with  
22 respect to the proceeding or of participation in the proceeding as a witness.  
23 Since the purpose of the staff is to aid the commissioner in the proper  
24 discharge of the commissioner's duties, the presiding officer shall be free  
25 at all times to confer with any staff member with respect to any  
26 proceeding. However, no facts that are outside the record, and that  
27 reasonably could be expected to influence the decision in any matter  
28 pending before the commissioner, shall be furnished to any presiding  
29 officer unless all parties to the proceeding are likewise informed and  
30 afforded a reasonable opportunity to respond. Subsection (b) shall apply to  
31 staff counsel who have participated in the proceeding in regard to any  
32 adjudicatory proceeding before the commissioner.

33 (d) All letters and written communications that are received by the  
34 presiding officer from members of the general public, and that are in the  
35 nature of ex parte communications, shall be made a part of the file in the  
36 docket and shall be made available to all persons who desire to see them.  
37 The deposit of such written communications and letters in the file shall not  
38 make them a part of the official record of the case.

39 Sec. 7. K.S.A. 77-548 is hereby amended to read as follows: 77-548.

40 (a) This section applies to adjudicative proceedings before the director of  
41 taxation. Informal conferences held pursuant to K.S.A. 79-3226, and  
42 amendments thereto, shall not be deemed to be adjudicative proceedings  
43 for the purposes of this act.

1 (b) (1) After the director has determined and announced that a  
2 hearing should be held, and prior to the issuance of a final order, no parties  
3 to the proceeding, or their counsel, shall discuss the merits of the matter or  
4 proceeding with the presiding officer unless reasonable notice is given to  
5 all parties who have appeared to enable the parties to be present at the  
6 conference.

7 (2) After the director has determined and announced that a hearing  
8 should be held, prior to the issuance of a final order, copies of any written  
9 communications from any party regarding the proceeding that are directed  
10 to the presiding officer shall be ~~mailed to~~ *served upon* all parties of record  
11 and proof of service shall be furnished to the director. Communications  
12 requested by the director's staff from any party and any written  
13 communication received by the director's staff from any party shall be  
14 made a part of the file and the docket and shall be made available to all  
15 persons who desire to use them, provided that the director's requests for  
16 information from a party shall be ~~mailed to~~ *served upon* all parties of  
17 record.

18 (3) The person or persons to whom any ex parte communication has  
19 been made shall promptly and fully inform the director of the substance of  
20 the communication, and the circumstances thereof, to enable the director  
21 of any division within the department to take appropriate action.

22 (c) For purposes of this section, no member of the director's technical  
23 staff shall be considered a party to any proceeding before the director,  
24 regardless of participation in staff investigations with respect to the  
25 proceeding or of participation in the proceeding as a witness. Since the  
26 purpose of the staff is to aid the director in the proper discharge of the  
27 director's duties, the presiding officer shall be free at all times to confer  
28 with any staff member with respect to any proceeding. However, no facts  
29 that are outside the record, and that reasonably could be expected to  
30 influence the decision in any matter pending before the director, shall be  
31 furnished to any presiding officer unless all parties to the proceeding are  
32 likewise informed and afforded a reasonable opportunity to respond.  
33 Subsection (b) shall apply to staff counsel who have participated in the  
34 proceeding in regard to any adjudicatory proceeding before the director.

35 (d) All letters and written communications that are received by the  
36 presiding officer from members of the general public, and that are in the  
37 nature of ex parte communications, shall be made a part of the file in the  
38 docket and shall be made available to all persons who desire to see them.  
39 The deposit of such written communications and letters in the file shall not  
40 make them a part of the official record of the case.

41 Sec. 8. K.S.A. 77-613 is hereby amended to read as follows: 77-613.  
42 Subject to other requirements of this act or of another statute:

43 (a) A petition for judicial review of a rule and regulation may be filed

1 at any time, except as otherwise provided by law.

2 (b) If reconsideration has not been requested and is not a prerequisite  
3 for seeking judicial review, a petition for judicial review of a final order  
4 shall be filed within 30 days after service of the order.

5 (c) Except as provided in K.S.A. 77-631, *and amendments thereto*, if  
6 reconsideration has been requested or is a prerequisite for seeking judicial  
7 review, a petition for judicial review of a final order shall be filed: (1)  
8 Within 30 days after service of the order rendered upon reconsideration,  
9 unless a further petition for reconsideration is required under K.S.A. 66-  
10 118b, and amendments thereto; (2) within 30 days after service of an order  
11 denying the request for reconsideration; or (3) in proceedings before the  
12 Kansas corporation commission, within 30 days of the date the request for  
13 reconsideration is deemed to have been denied.

14 (d) A petition for judicial review of agency action other than a rule  
15 and regulation or final order shall be filed within 30 days after the agency  
16 action, but the time is extended:

17 (1) During the pendency of the petitioner's timely attempts to exhaust  
18 administrative remedies; and

19 (2) during any period that the petitioner did not know and was under  
20 no duty to discover, or did not know and was under a duty to discover but  
21 could not reasonably have discovered, that the agency had taken the action  
22 or that the agency action had a sufficient effect to confer standing upon the  
23 petitioner to obtain judicial review under this act.

24 (e) Service of an order, pleading or other matter shall be made upon  
25 the parties to the agency proceeding and their attorneys of record, if any,  
26 by:

27 (1) Delivering a copy of it to them ~~or by~~;

28 (2) mailing a copy of it to them at their last known addresses; or

29 (3) ~~sending-transmitting~~ a copy of it to them by electronic means  
30 when authorized by supreme court rule or a local rule.

31 Delivery of a copy of an order, pleading or other matter means handing  
32 it to the person being served or leaving it at that person's principal place of  
33 business or residence with a person of suitable age and discretion who  
34 works or resides therein. Service shall be presumed if the presiding officer,  
35 or a person directed to make service by the presiding officer, makes a  
36 written certificate of service. Service by mail is complete upon mailing.  
37 Whenever a party has the right or is required to do some act or take some  
38 proceedings within a prescribed period after service of an order, pleading  
39 or other matter and it is served by mail *or electronic means*, three days  
40 shall be added to the prescribed period. Unless reconsideration is a  
41 prerequisite for seeking judicial review, a final order shall state the agency  
42 officer to receive service of a petition for judicial review on behalf of the  
43 agency.

- 1       Sec. 9. K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and
- 2 K.S.A. ~~2014~~ **2015** Supp. 77-519, 77-521 and 77-531 are hereby repealed.
- 3       Sec. 10. This act shall take effect and be in force from and after its
- 4 publication in the statute book.