

SENATE BILL No. 206

By Committee on Federal and State Affairs

2-11

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 amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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;

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

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

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

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

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

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

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

17 New Sec. 5. (a) In lieu of bringing an action as provided in K.S.A.
18 75-4320a, and amendments thereto, the attorney general or a county or
19 district attorney may resolve the matter by accepting a consent judgment
20 with respect to any act or practice declared to be a violation of this act.
21 Before any consent judgment entered into pursuant to this section shall be
22 effective, such judgment must be approved by the district court and an
23 entry made thereof in the manner required for making an entry of
24 judgment. Once such approval is received, any breach of the conditions of
25 the consent judgment shall be treated as a violation of a court order, and
26 shall be subject to all the penalties provided by law therefor.

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

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

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

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

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

1 and amendments thereto, and the open meetings act, K.S.A. 75-4317 et
2 seq., and amendments thereto. All expenditures from the attorney general's
3 open government fund shall be made in accordance with appropriation acts
4 upon warrants of the director of accounts and reports issued pursuant to
5 vouchers approved by the attorney general or a person designated by the
6 attorney general.

7 (b) All civil penalties, expenses, costs and attorney fees awarded in
8 an action brought by the attorney general pursuant to the open records act,
9 K.S.A. 45-215 et seq., and amendments thereto, or the open meetings act,
10 K.S.A. 75-4317 et seq., and amendments thereto, or pursuant to a consent
11 order or finding of violation of the attorney general as provided in section
12 1 or section 4, and amendments thereto, shall be credited to the attorney
13 general's open government fund.

14 New Sec. 8. (a) Subject to the availability of appropriations, the
15 attorney general shall provide and coordinate training throughout the state
16 to promote knowledge of, and compliance with, the open records act,
17 K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act,
18 K.S.A. 75-4317 et seq., and amendments thereto. The attorney general
19 may consult and coordinate with any appropriate organization to provide
20 training.

21 (b) The attorney general may establish a program of computerized
22 training to promote knowledge of, and compliance with, the open records
23 act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings
24 act, K.S.A. 75-4317, and amendments thereto, and to make training
25 available throughout the state.

26 (c) The attorney general may approve training programs that satisfy
27 training requirements imposed by the district court or by any order or
28 judgment pursuant to the open records act, K.S.A. 45-215 et seq., and
29 amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq.,
30 and amendments thereto.

31 New Sec. 9. The attorney general may adopt rules and regulations to
32 implement and administer the provisions of the open records act, K.S.A.
33 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A.
34 75-4317 et seq., and amendments thereto.

35 Sec. 10. K.S.A. 2014 Supp. 45-222 is hereby amended to read as
36 follows: 45-222. (a) The district court of any county in which public
37 records are located shall have jurisdiction to enforce the purposes of this
38 act with respect to such records, by injunction, mandamus, *declaratory*
39 *judgment* or other appropriate order, in an action brought by any person,
40 the attorney general or a county or district attorney. *The district court may*
41 *require a defendant to complete training approved by the attorney general*
42 *concerning the requirements of the open records act.*

43 (b) In any action hereunder, the court shall determine the matter de

1 novo. The court on its own motion, or on motion of either party, may view
2 the records in controversy in camera before reaching a decision.

3 (c) *In any action hereunder, or under section 1, and amendments*
4 *thereto, the burden of proof shall be on the public agency to sustain its*
5 *action.*

6 (d) In any action hereunder, the court shall award costs and a
7 reasonable sum as an attorney's fee for services rendered in such action,
8 including proceedings on appeal, to be recovered and collected as part of
9 the costs to the plaintiff if the court finds that the agency's denial of access
10 to the public record was not in good faith and without a reasonable basis in
11 fact or law. The award shall be assessed against the public agency that the
12 court determines to be responsible for the violation.

13 ~~(d)~~(e) In any action hereunder in which the defendant is the
14 prevailing party, the court shall award to the defendant costs and a
15 reasonable sum as an attorney's fee for services rendered in such action,
16 including proceedings on appeal, to be recovered and collected as part of
17 the costs if the court finds that the plaintiff maintained the action not in
18 good faith and without a reasonable basis in fact or law.

19 ~~(e)~~(f) *In any action hereunder brought by the attorney general or a*
20 *county or district attorney, if the court finds that any provisions were*
21 *violated, the court: (1) May award the attorney general's or the county or*
22 *district attorney's reasonable expenses, investigation costs and attorney*
23 *fees; and (2) shall award the same if the court determines that the*
24 *violation was not in good faith and without a reasonable basis in fact or*
25 *law.*

26 (g) Except as otherwise provided by law, proceedings arising under
27 this section shall be assigned for hearing and trial at the earliest practicable
28 date.

29 ~~(f)~~(h) The provisions of subsections (c) and (d) concerning the
30 awarding of costs and attorney fees for services rendered during an appeal
31 shall apply only to actions which are based on causes of action accruing on
32 or after July 1, 2004.

33 Sec. 11. K.S.A. 45-223 is hereby amended to read as follows: 45-223.

34 (a) Any public agency subject to this act that knowingly violates any of the
35 provisions of this act or that intentionally fails to furnish information as
36 required by this act shall be liable for the payment of a civil penalty in an
37 action brought by the attorney general or a county or district attorney, in a
38 sum set by the court of not to exceed \$500 for each violation.

39 (b) Any civil penalty sued for and recovered hereunder by the
40 attorney general shall be paid into the ~~state general~~ *attorney general's*
41 *open government* fund. Any civil penalty sued for and recovered hereunder
42 by a county or district attorney shall be paid into the general fund of the
43 county in which the proceedings were instigated.

1 Sec. 12. K.S.A. 45-228 is hereby amended to read as follows: 45-228.

2 (a) In investigating alleged violations of the ~~Kansas~~ open records act, the
3 attorney general or county or district attorney may:

4 ~~(a)~~(1) Subpoena witnesses, evidence, *records*, documents or other
5 material;

6 ~~(b)~~(2) take testimony under oath;

7 ~~(c)~~(3) examine or cause to be examined any *records or other*
8 documentary material of whatever nature relevant to such alleged
9 violations;

10 ~~(d)~~(4) require attendance during such examination of documentary
11 material and take testimony under oath or acknowledgment in respect of
12 any such documentary material; ~~and~~

13 ~~(e)~~(5) serve interrogatories; *and*

14 (6) *administer oaths and affirmations.*

15 (b) *If a public agency claims in writing that any records or*
16 *documents, or any portion thereof, obtained by the attorney general or a*
17 *county or district attorney pursuant to subsection (a) are exempt from*
18 *disclosure for any reason, the attorney general or a county or district*
19 *attorney shall not further disclose that record or document, nor the*
20 *contents thereof, unless ordered to do so by a district court enforcing the*
21 *open records act in connection with such record or document. Such*
22 *records and documents in the possession of the attorney general or a*
23 *county or district attorney shall not be subject to a request for inspection*
24 *and copying under the open records act and shall not be subject to*
25 *discovery, subpoena, or other process.*

26 (c) *Service by the attorney general or a county or district attorney of*
27 *any interrogatories or subpoena upon any person, shall be made:*

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

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

32 (d) *If any person willfully fails or refuses to file any response to a*
33 *request for information, records or other materials required by this*
34 *section, respond to interrogatories or obey any subpoena issued by the*
35 *attorney general or a county or district attorney, the attorney general or a*
36 *county or district attorney may, after notice, apply to the district court of*
37 *the county where the request, interrogatories or subpoena was issued, or*
38 *of any other county where venue is proper, and after a hearing thereon the*
39 *district court may:*

40 (1) *Issue an order requiring a response to the request for*
41 *information, records or other materials, a response to the interrogatories*
42 *or compliance with the subpoena; or*

43 (2) *grant such other relief as may be required, until the person*

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
30 application of any person. *The district court may require a defendant to*
31 *complete training approved by the attorney general concerning the*
32 *requirements of 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

1 without a reasonable basis in fact or law.

2 (e) *In any action hereunder brought by the attorney general or a*
3 *county or district attorney, if the court finds that any provisions of K.S.A.*
4 *75-4318 or 75-4319, and amendments thereto, were violated, the court:*
5 *(1) May award the attorney general's or the county or district attorney's*
6 *reasonable expenses, investigation costs and attorney fees; and (2) shall*
7 *award the same if the court determines that the violation was not in good*
8 *faith and without a reasonable basis in fact or law.*

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

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

14 Sec. 15. K.S.A. 2014 Supp. 75-4320b is hereby amended to read as
15 follows: 75-4320b. (a) In investigating alleged violations of the ~~Kansas~~
16 open meetings act, the attorney general or county or district attorney may:

17 (a)(1) Subpoena witnesses, evidence, *records*, documents or other
18 material;

19 (b)(2) take testimony under oath;

20 (c)(3) examine or cause to be examined any *records or other*
21 documentary material of whatever nature relevant to such alleged
22 violations;

23 (d)(4) require attendance during such examination of documentary
24 material and take testimony under oath or acknowledgment in respect of
25 any such documentary material; ~~and~~

26 (e)(5) serve interrogatories; *and*

27 (6) *administer oaths and affirmations.*

28 (b) *Service by the attorney general or a county or district attorney of*
29 *any interrogatories or subpoena upon any person, shall be made:*

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

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

34 (c) *If any person willfully fails or refuses to file any response to a*
35 *request for information, records or other materials required by this*
36 *section, respond to interrogatories or obey any subpoena issued by the*
37 *attorney general or a county or district attorney, the attorney general or a*
38 *county or district attorney may, after notice, apply to the district court of*
39 *the county where the request, interrogatories or subpoena was issued, or*
40 *of any other county where venue is proper, and after a hearing thereon the*
41 *district court may:*

42 (1) *Issue an order requiring a response to the request for*
43 *information, records or other materials, a response to interrogatories or*

1 *compliance with the subpoena; or*
2 *(2) grant such other relief as may be required, until the person*
3 *provides the requested response for information, records or other*
4 *materials, responds to the interrogatories or obeys the subpoena.*

5 Sec. 16. K.S.A. 45-223, 45-228 and 75-4320a and K.S.A. 2014 Supp.
6 45-222, 75-4320 and 75-4320b are hereby repealed.

7 Sec. 17. This act shall take effect and be in force from and after its
8 publication in the statute book.