

2018 Kansas Statutes

45-251. Civil remedies to enforce act by attorney general; consent order; finding of violation. (a) The attorney general may determine by a preponderance of the evidence after an investigation that a public agency has violated K.S.A. 45-215 et seq., and amendments thereto, and may, at any time prior to the filing of an action pursuant to K.S.A. 45-222, and amendments thereto, either enter into a consent order with the public agency or issue a finding of violation to the public agency.

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

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

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

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

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

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

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

(A) Cease and desist from further violation;

(B) comply with the provisions of K.S.A. 45-215 et seq., and 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 court costs and costs incurred in investigating the violation; and

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

(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.

(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 records act.

History: L. 2015, ch. 68, § 1; July 1.