

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2175

By Representatives Hildabrand, Bradford, Christmann, Claeys, Dierks, Esau,
Garber, Goico, Grosserode, Hedke, Houser, Howell, McPherson, Montgomery,
O'Brien, Petty, Read, Rothlisberg, Rubin, Todd and Weber

1-30

1 AN ACT concerning crimes and punishments; relating to official
2 misconduct; amending K.S.A. 2012 Supp. 21-6002 and repealing the
3 existing section.
4

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

6 Section 1. K.S.A. 2012 Supp. 21-6002 is hereby amended to read as
7 follows: 21-6002. (a) Official misconduct is any of the following acts
8 committed by a public officer or employee in the officer or employee's
9 public capacity or under color of the officer or employee's office or
10 employment:

11 (1) Knowingly using or authorizing the use of any aircraft, as defined
12 by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A.
13 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102,
14 and amendments thereto, under the officer's or employee's control or
15 direction, or in the officer's or employee's custody, exclusively for the
16 private benefit or gain of the officer or employee or another;

17 (2) knowingly failing to serve civil process when required by law;

18 (3) using confidential information acquired in the course of and
19 related to the officer's or employee's office or employment for the private
20 benefit or gain of the officer or employee or another or to intentionally
21 cause harm to another;

22 (4) except as authorized by law, with the intent to reduce or eliminate
23 competition among bidders or prospective bidders on any contract or
24 proposed contract:

25 (A) Disclosing confidential information regarding proposals or
26 communications from bidders or prospective bidders on any contract or
27 proposed contract;

28 (B) accepting any bid or proposal on a contract or proposed contract
29 after the deadline for acceptance of such bid or proposal; or

30 (C) altering any bid or proposal submitted by a bidder on a contract
31 or proposed contract;

32 (5) except as authorized by law, knowingly destroying, tampering
33 with or concealing evidence of a crime; or

34 (6) knowingly submitting to a governmental entity a claim for

1 expenses which is false or duplicates expenses for which a claim is
2 submitted to such governmental entity, another governmental or private
3 entity; or

4 (7) *as part of a determination of whether to grant another person*
5 *access to a publicly accessible—venue—~~or~~ form of transportation,*
6 *intentionally and without probable cause:*

7 (A) *Touches the genitals, buttocks, anus or female breasts of such*
8 *person, including touching through clothing;*

9 (B) *removes a child younger than 18 years of age from the physical*
10 *custody or control of such child's parent or legal guardian, or a person*
11 *standing in the stead of such child's parent or legal guardian;*

12 (C) *commits a violation of subsection (a) or (b) of K.S.A. 2012 Supp.*
13 *21-5412, and amendments thereto; or*

14 (D) *harasses, delays, coerces, threatens, intimidates, or denies or*
15 *conditions such person's accessibility because of such person's refusal to*
16 *consent to subsections (a)(7)(A), (a)(7)(B) or (a)(7)(C).*

17 (b) (1) Official misconduct as defined in:

18 (A) Subsections (a)(1) through (a)(4) is a class A nonperson
19 misdemeanor;

20 (B) subsection (a)(5) is a:

21 (i) Severity level 8, nonperson felony if the evidence is evidence of a
22 crime which is a felony; and

23 (ii) class A nonperson misdemeanor if the evidence is evidence of a
24 crime which is a misdemeanor; ~~and~~

25 (C) subsection (a)(6) if the claim is:

26 (i) \$25,000 or more is a severity level 7, nonperson felony;

27 (ii) at least \$1,000 but less than \$25,000 is a severity level 9,
28 nonperson felony; and

29 (iii) less than \$1,000 is a class A nonperson misdemeanor;

30 (D) *subsection (a)(7) is a class A person misdemeanor.*

31 (2) Upon conviction of official misconduct a public officer or
32 employee shall forfeit such officer or employee's office or employment.

33 (c) The provisions of subsection (a)(1) shall not apply to any use of
34 persons or property which:

35 (1) At the time of the use, is authorized by law or by formal written
36 policy of the governmental entity; or

37 (2) constitutes misuse of public funds, as defined in K.S.A. 2012
38 Supp. 21-6005, and amendments thereto.

39 (d) *As used in subsection (a)(7), "public officer or employee"*
40 *includes, but is not limited to:*

41 ~~(1) An officer, employee or agent of:~~

42 ~~(A) a federal branch, department or agency; or~~

43 ~~(B) any person acting under a contract with a federal branch;~~

1 ~~department or agency to provide a security or law enforcement service; or~~

2 ~~(2) any person acting under color of federal law~~ **means an officer,**
3 **employee or agent of the federal transportation security**
4 **administration, or any successor entity, or any person acting under a**
5 **contract with the federal transportation security administration, or**
6 **any successor entity.**

7 ~~(d)~~ (e) As used in this section, "confidential" means any information
8 that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and
9 amendments thereto.

10 New Sec. 2. The attorney general, with the consent of the proper
11 county or district attorney, shall take any actions necessary on behalf of the
12 state of Kansas to defend the validity of K.S.A. 2012 Supp. 21-6002, and
13 amendments thereto, if such section is challenged on grounds of
14 unconstitutionality, preemption or sovereign immunity. The attorney
15 general may make any legal arguments the attorney general considers
16 appropriate, including, but not limited to, a valid exercise of the state's
17 police powers, liberty interests secured by the constitution of the United
18 States, powers reserved to the states by the tenth amendment of the
19 constitution of the United States or any rights and protections secured by
20 the constitution of the state of Kansas.

21 Sec. 3. K.S.A. 2012 Supp. 21-6002 is hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the statute book.