

HOUSE BILL No. 2488

By Committee on Judiciary

2-9

AN ACT concerning administrative procedure; concerning presiding of-
ficers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-
509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163a, 65-673, 65-720a,
65-747, 65-753, 65-2305, 65-3483, 65-3488, 65-3490, 66-1,117, 75-
37,121, 75-37,122, 75-6207, 76-3110, 77-505, 77-549, 77-550, 77-551,
77-551, as amended by section 43 of this act, 79-3313, 82a-1405, 82a-
1501a, 82a-1502, 82a-1503 and 82a-1504 and K.S.A. 2000 Supp. 65-
163, 65-525, 65-526, 66-1,117, 74-4904, 74-8804, 74-8816, 74-8817,
74-8837, 77-514 and 77-514 as amended by section 39 of this act and
repealing the existing sections; also repealing K.S.A. 75-5611a.

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

New Section 1. On and after July 1, 2005: (a) Except as otherwise
provided by this act, all of the powers, duties and functions of the office
of administrative hearings within the department of administration and
the secretary of administration concerning adjudicative proceedings of
the Kansas administrative procedure act are hereby transferred to and
conferred and imposed upon the office of administrative hearings and the
director established by this act.

(b) Except as otherwise provided by this act, the office of adminis-
trative hearings and the director established by this act shall be the suc-
cessor in every way to the powers, duties and functions of the office of
administrative hearings within the department of administration and the
secretary of administration concerning adjudicative proceedings of the
Kansas administrative procedure act in which the same were vested prior
to the effective date of this section. Every act performed in the exercise
of such powers, duties and functions by or under the authority of the
office of administrative hearings and the director concerning adjudicative
proceedings of the Kansas administrative procedure act established by
this act shall be deemed to have the same force and effect as if performed
by the office of administrative hearings within the department of admin-
istration and the secretary of administration, respectively, in which such
powers, duties and functions were vested prior to the effective date of
this section.

(c) Except as otherwise provided by this act, whenever the office of

1 administrative hearings within the department of administration and the
2 secretary of administration, or words of like effect concerning adjudicative
3 proceedings of the Kansas administrative procedure act, is referred to or
4 designated by a statute, contract or other document, such reference or
5 designation shall be deemed to apply to the office of administrative hear-
6 ings established by this act.

7 (d) Except as otherwise provided by this act, whenever the secretary
8 of administration, or words of like effect concerning adjudicative pro-
9 ceedings of the Kansas administrative procedure act, is referred to or
10 designated by a statute, contract or other document, such reference or
11 designation shall be deemed to apply to the director established by this
12 act.

13 (e) All rules and regulations of the office of administrative hearings
14 within the department of administration and the secretary of administra-
15 tion concerning adjudicative proceedings of the Kansas administrative
16 procedure act in existence on the effective date of this section shall con-
17 tinue to be effective and shall be deemed to be duly adopted rules and
18 regulations of the director of the office of administrative hearings estab-
19 lished by this act until revised, amended, revoked or nullified pursuant
20 to law.

21 (f) All orders and directives of the office of administrative hearings
22 within the department of administration and the secretary of administra-
23 tion concerning adjudicative proceedings of the Kansas administrative
24 procedure act in existence on the effective date of this section shall con-
25 tinue to be effective and shall be deemed to be orders and directives of
26 the director of the office of administrative hearings established by this
27 act until revised, amended or nullified pursuant to law.

28 (g) On the effective date of this section, the director of the office of
29 administrative hearings established by this act shall succeed to whatever
30 right, title or interest the department of administration has acquired in
31 any real property in this state concerning adjudicative proceedings of the
32 Kansas administrative procedure act, and the director of the office of
33 administrative hearings shall hold the same for and in the name of the
34 state of Kansas. On and after the effective date of this section, whenever
35 any statute, contract, deed or other document concerns the power or
36 authority of the office of administrative hearings within the department
37 of administration and the secretary of administration concerning adjudi-
38 cative proceedings of the Kansas administrative procedure act to acquire,
39 hold or dispose of real property or any interest therein, the office of
40 administrative hearings and the director as established by this act shall
41 succeed to such power or authority.

42 (h) The office of administrative hearings and the director established
43 by this act shall be continuations of the office of administrative hearings

1 within the department of administration and the secretary of administra-
2 tion concerning adjudicative proceedings of the Kansas administrative
3 procedure act.

4 New Sec. 2. Except as otherwise provided in this act, on July 1, 2005,
5 any presiding officer in the administrative hearings section of all agencies
6 which conduct hearings pursuant to the Kansas administrative procedure
7 act, except those exempted pursuant to K.S.A. 75-551, and amendments
8 thereto, and support personnel for such presiding officers, shall be trans-
9 ferred to and shall become employees of the office of administrative hear-
10 ings established under this act. Such personnel shall retain all rights under
11 the state personnel system and retirement benefits under the laws of this
12 state which had accrued to or vested in such personnel prior to the ef-
13 fective date of this section. Such person's services shall be deemed to
14 have been continuous. All transfers of personnel positions in the classified
15 service under the Kansas civil service act shall be in accordance with civil
16 service laws and any rules and regulations adopted thereunder. This sec-
17 tion shall not affect any matter pending before an administrative hearing
18 officer at the time of the effective date of the transfer, and such matter
19 shall proceed as though no transfer of employment had occurred.

20 New Sec. 3. On and after July 1, 2005:

21 (a) When any conflict arises as to the disposition of any power, func-
22 tion or duty or the unexpended balance of any appropriation as a result
23 of any abolition, transfer, attachment or change made by or under au-
24 thority of this act, such conflict shall be resolved by the governor, whose
25 decision shall be final.

26 (b) The office of administrative hearings shall succeed to all property
27 and records which were used for or pertain to the performance of the
28 powers, duties and functions transferred to the office of administrative
29 hearings. Any conflict as to the proper disposition of property or records
30 arising under this section, and resulting from the transfer or attachment
31 of any state agency, or all or part of the powers, duties and functions
32 thereof, shall be determined by the governor, whose decision shall be
33 final.

34 New Sec. 4. On and after July 1, 2005:

35 (a) The office of administrative hearings shall have the legal custody
36 of all records, memoranda, writings, entries, prints, representations or
37 combinations thereof of any act, transaction, occurrence or event of the
38 office of administrative hearings within the department of administration
39 concerning adjudicative proceedings of the Kansas administrative pro-
40 cedure act and any agency or office transferred thereto under this act.

41 (b) No suit, action or other proceeding, judicial or administrative,
42 lawfully commenced, or which could have been commenced, by or against
43 any state agency mentioned in this act, or by or against any officer of the

1 state in such officer's official capacity or in relation to the discharge of
2 such officer's official duties, shall abate by reason of the governmental
3 reorganization effected under the provisions of this act. The court may
4 allow any such suit, action or other proceeding to be maintained by or
5 against the successor of any such state agency or any officer affected.

6 (c) No criminal action commenced or which could have been com-
7 menced by the state shall abate by the taking effect of this act.

8 New Sec. 5. (a) On and after July 1, 2005, the balance of all funds
9 appropriated and reappropriated to the office of administrative hearings
10 within the department of administration concerning adjudicative pro-
11 ceedings of the Kansas administrative procedure act is hereby transferred
12 to the office of administrative hearings and shall be used only for the
13 purpose for which the appropriation was originally made.

14 (b) On and after July 1, 2005, the liability for all accrued compensa-
15 tion or salaries of officers and employees who, immediately prior to such
16 date, were engaged in the performance of powers, duties or functions of
17 the office of administrative hearings within the department of adminis-
18 tration concerning adjudicative proceedings of the Kansas administrative
19 procedure act, or who become a part of the office of administrative hear-
20 ings established by this act, or the powers, duties and functions of which
21 are transferred to the office of administrative hearings provided for by
22 this act, shall be assumed and paid by the office of administrative hearings
23 established by this act.

24 Sec. 6. On and after July 1, 2004, K.S.A. 2-1208a is hereby amended
25 to read as follows: 2-1208a. (a) If it shall appear to the secretary or an
26 authorized representative of the secretary from examination or analysis
27 of an official sample of a commercial fertilizer that the commercial fer-
28 tilizer is falsely labeled or fails to comply with the provisions of this act,
29 the secretary shall cause notice to be given to the person in possession of
30 the commercial fertilizer and the registrant that a hearing in relation
31 thereto will be held at a date and place named in such notice. Whereupon
32 the secretary or ~~an authorized representative of the secretary~~ *a presiding*
33 *officer from the office of administrative hearings* shall hold a hearing in
34 accordance with the provisions of the Kansas administrative procedure
35 act.

36 (b) If it is established at the hearing to the satisfaction of the secre-
37 tary, or ~~an authorized representative of the secretary~~ *a presiding officer*
38 *from the office of administrative hearings*, that any commercial fertilizer
39 has been registered in error, or has been sold in violation of any of the
40 provisions of this act, or that any provision of this act has been violated,
41 the secretary shall have power to cancel the registration of such brand or
42 brands of commercial fertilizer, and may report the facts to the proper
43 prosecuting attorney and furnish that officer with an official report of the

1 record of such hearing and a copy of the result of any analysis or other
2 examination which may have a bearing on the case. Prosecution may be
3 instituted under the provisions of this act in the district court of the county
4 where the offense is alleged to have been committed, upon complaint of
5 the secretary or an authorized representative of the secretary or any cit-
6 izen of this state, or by any county attorney and shall be prosecuted by
7 the county attorney in the name of the state of Kansas.

8 Sec. 7. On and after July 1, 2004, K.S.A. 2-3311 is hereby amended
9 to read as follows: 2-3311. Before any chemigation user registration or
10 chemigation user's permit shall be revoked, denied renewal or before it
11 shall be suspended for any cause, the secretary shall conduct a hearing in
12 accordance with the provisions of the Kansas administrative procedure
13 act. The notice of hearing shall be sent to the registrant or permit holder
14 at least 15 days prior to the hearing date and shall be served upon the
15 registrant or permit holder by letter sent to such person's address as
16 shown by the records of the secretary, setting out the time and place of
17 the hearing and alleged grounds for revocation or suspension. The reg-
18 istrant or permit holder shall have the right to appear in person and by
19 counsel and to testify and introduce evidence. If such person fails to
20 appear, the matter may be heard in such person's absence. Any such
21 hearing may be conducted by the secretary or ~~by a hearing officer duly~~
22 ~~appointed by the secretary~~ *a presiding officer from the office of admin-*
23 *istrative hearings.*

24 Sec. 8. On and after July 1, 2002, K.S.A. 8-2426 is hereby amended
25 to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments
26 thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any
27 person violating any provision thereof shall be subject to civil penalty of
28 not less than \$350 and not to exceed \$1,000, as determined by the director
29 of vehicles or a ~~person appointed by the director~~ *presiding officer from*
30 *the office of administrative hearings* after notice and hearing in accord-
31 ance with the provisions of the Kansas administrative procedure act. The
32 provisions of this section shall not affect the authority of the secretary of
33 revenue or any officer of the department of revenue in enforcing any
34 provision of the vehicle dealers and manufacturers licensing act, of which
35 K.S.A. 8-2425 and amendments thereto and this section shall be a part.

36 Sec. 9. On and after July 1, 2001, K.S.A. 21-3110 is hereby amended
37 to read as follows: 21-3110. The following definitions shall apply when
38 the words and phrases defined are used in this code, except when a par-
39 ticular context clearly requires a different meaning.

40 (1) "Act" includes a failure or omission to take action.

41 (2) "Another" means a person or persons as defined in this code other
42 than the person whose act is claimed to be criminal.

43 (3) "Conduct" means an act or a series of acts, and the accompanying

1 mental state.

2 (4) "Conviction" includes a judgment of guilt entered upon a plea of
3 guilty.

4 (5) "Deception" means knowingly and willfully making a false state-
5 ment or representation, express or implied, pertaining to a present or past
6 existing fact.

7 (6) To "deprive permanently" means to:

8 (a) Take from the owner the possession, use or benefit of his or her
9 property, without an intent to restore the same; or

10 (b) Retain property without intent to restore the same or with intent
11 to restore it to the owner only if the owner purchases or leases it back,
12 or pays a reward or other compensation for its return; or

13 (c) Sell, give, pledge or otherwise dispose of any interest in property
14 or subject it to the claim of a person other than the owner.

15 (7) "Dwelling" means a building or portion thereof, a tent, a vehicle
16 or other enclosed space which is used or intended for use as a human
17 habitation, home or residence.

18 (8) "Forcible felony" includes any treason, murder, voluntary man-
19 slaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery,
20 aggravated sodomy and any other felony which involves the use or threat
21 of physical force or violence against any person.

22 (9) "Intent to defraud" means an intention to deceive another person,
23 and to induce such other person, in reliance upon such deception, to
24 assume, create, transfer, alter or terminate a right, obligation or power
25 with reference to property.

26 (10) "Law enforcement officer" means any person who by virtue of
27 such person's office or public employment is vested by law with a duty
28 to maintain public order or to make arrests for crimes, whether that duty
29 extends to all crimes or is limited to specific crimes or any officer of the
30 Kansas department of corrections or for the purposes of K.S.A. 21-3409,
31 21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amend-
32 ments thereto, any employee of the Kansas department of corrections.

33 (11) "Obtain" means to bring about a transfer of interest in or pos-
34 session of property, whether to the offender or to another.

35 (12) "Obtains or exerts control" over property includes but is not
36 limited to, the taking, carrying away, or the sale, conveyance, or transfer
37 of title to, interest in, or possession of property.

38 (13) "Owner" means a person who has any interest in property.

39 (14) "Person" means an individual, public or private corporation, gov-
40 ernment, partnership, or unincorporated association.

41 (15) "Personal property" means goods, chattels, effects, evidences of
42 rights in action and all written instruments by which any pecuniary obli-
43 gation, or any right or title to property real or personal, shall be created,

1 acknowledged, assigned, transferred, increased, defeated, discharged, or
2 dismissed.

3 (16) "Property" means anything of value, tangible or intangible, real
4 or personal.

5 (17) "Prosecution" means all legal proceedings by which a person's
6 liability for a crime is determined.

7 (18) "Public employee" is a person employed by or acting for the
8 state or by or for a county, municipality or other subdivision or govern-
9 mental instrumentality of the state for the purpose of exercising their
10 respective powers and performing their respective duties, and who is not
11 a "public officer."

12 (19) "Public officer" includes the following, whether elected or
13 appointed:

14 (a) An executive or administrative officer of the state, or a county,
15 municipality or other subdivision or governmental instrumentality of or
16 within the state.

17 (b) A member of the legislature or of a governing board of a county,
18 municipality, or other subdivision of or within the state.

19 (c) A judicial officer, which shall include a judge of the district court,
20 juror, master or any other person appointed by a judge or court to hear
21 or determine a cause or controversy.

22 (d) A hearing officer *or presiding officer*, which shall include any per-
23 son authorized by law or private agreement, to hear or determine a cause
24 or controversy and who is not a judicial officer.

25 (e) A law enforcement officer.

26 (f) Any other person exercising the functions of a public officer under
27 color of right.

28 (20) "Real property" or "real estate" means every estate, interest, and
29 right in lands, tenements and hereditaments.

30 (21) "Solicit" or "solicitation" means to command, authorize, urge,
31 incite, request, or advise another to commit a crime.

32 (22) "State" or "this state" means the state of Kansas and all land and
33 water in respect to which the state of Kansas has either exclusive or con-
34 current jurisdiction, and the air space above such land and water. "Other
35 state" means any state or territory of the United States, the District of
36 Columbia and the Commonwealth of Puerto Rico.

37 (23) "Stolen property" means property over which control has been
38 obtained by theft.

39 (24) "Threat" means a communicated intent to inflict physical or
40 other harm on any person or on property.

41 (25) "Written instrument" means any paper, document or other in-
42 strument containing written or printed matter or the equivalent thereof,
43 used for purposes of reciting, embodying, conveying or recording infor-

1 mation, and any money, token, stamp, seal, badge, trademark, or other
2 evidence or symbol of value, right, privilege or identification, which is
3 capable of being used to the advantage or disadvantage of some person.

4 Sec. 10. On and after July 1, 2005, K.S.A. 31-140 is hereby amended
5 to read as follows: 31-140. Any person aggrieved by any order or ruling
6 issued pursuant to the provisions of this act may appeal such order or
7 ruling to the state fire marshal within 15 days from the date of the service
8 of such order by filing a notice of such appeal in the office of the state
9 fire marshal. The state fire marshal or ~~the state fire marshal's authorized~~
10 ~~representative~~ *a presiding officer from the office of administrative hear-*
11 *ings* shall hear such person within 30 days after the receipt of such notice
12 of appeal, and the hearing shall be held in accordance with the provisions
13 of the Kansas administrative procedure act. The state fire marshal shall
14 file a decision thereon and, unless by authority of the state fire marshal
15 the order is revoked or modified, the order shall be complied with within
16 the time fixed in such decision.

17 Sec. 11. On and after July 1, 2003, K.S.A. 36-509 is hereby amended
18 to read as follows: 36-509. (a) Whenever a timely request for a hearing
19 shall be filed with the secretary pursuant to the provisions of this act the
20 secretary shall set a time and place for such hearing which shall be held
21 within not to exceed 20 days of the request therefor. Upon such hearing,
22 the secretary or a ~~person designated by the secretary as a hearing officer~~
23 *presiding officer from the office of administrative hearings* may issue sub-
24 poenas for the attendance of witnesses and the production of relevant
25 books and papers. At the hearing, the applicant shall have the right to be
26 represented by counsel, to present witnesses and evidence in own behalf
27 and to cross-examine adverse witnesses.

28 (b) Upon completion of the hearing, the secretary may affirm, rescind
29 or modify the order denying, suspending or revoking the applicant's li-
30 cense. Any person aggrieved by any such decision of the secretary may
31 appeal to the district court in the manner provided by the act for judicial
32 review and civil enforcement of agency actions.

33 Sec. 12. On and after July 1, 2005, K.S.A. 40-2,137 is hereby
34 amended to read as follows: 40-2,137. (a) The costs incurred by the de-
35 partment of insurance in conducting any administrative hearing author-
36 ized by article 33 of chapter 40 of the Kansas Statutes Annotated and
37 subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A.
38 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsec-
39 tion (a) of K.S.A. 40-1114 and K.S.A. 40-1120, and amendments thereto,
40 shall be assessed against insurers or rating organizations that are parties
41 to the hearing in such proportion as the commissioner of insurance may
42 determine upon consideration of all relevant circumstances including: (1)
43 The nature of the hearing; (2) whether the hearing was instigated by, or

1 for the benefit of a particular party or parties; (3) whether there is a
2 successful party on the merits of the proceeding; (4) the relative levels of
3 participation by the parties; and (5) with the exception of hearings held
4 under article 33 of chapter 40 of the Kansas Statutes Annotated, only
5 when the disapproval of rates in question is upheld, a rating organization's
6 license is suspended or revoked or a penalty is imposed as a result of the
7 hearing.

8 (b) For purposes of this section costs incurred shall mean the ~~hearing~~
9 *presiding officer* fees, cost of making a record and publishing notices, and
10 travel expenses of department of insurance officers and employees, but
11 costs incurred shall not include ~~hearing presiding officer~~ fees or cost of
12 making a record unless the department has retained the services of ~~in-~~
13 ~~dependent contractors~~ *the office of administrative hearings* or outside
14 experts to perform such functions.

15 (c) Any costs assessed hereunder shall be made by the commissioner
16 as part of the final order or decision arising out of the proceeding. Such
17 order or decision shall include findings and conclusions in support of the
18 assessment of costs. This section shall not be construed as permitting the
19 payment of travel expenses unless calculated in accordance with the ap-
20 plicable laws and rules and regulations of the state of Kansas. The com-
21 missioner as part of such order or decision may require all assessments
22 for ~~hearing presiding officer~~ fees and cost of making a record, if any, to
23 be paid directly to the ~~hearing officer or court reporter~~ *office of admin-*
24 *istrative hearings* by the party or parties assessed for such costs.

25 Sec. 13. On and after July 1, 2004, K.S.A. 44-322a is hereby amended
26 to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under
27 K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the
28 secretary of human resources, the secretary or the secretary's authorized
29 representative shall investigate the claim as provided in K.S.A. 44-322
30 and amendments thereto to determine if a dispute exists between the
31 parties to the claim. If the secretary or the secretary's authorized repre-
32 sentative determines that a dispute does exist and that the parties are
33 unable to resolve their differences, the secretary or ~~the secretary's au-~~
34 ~~thorized representative~~ *a presiding officer from the office of administra-*
35 *tive hearings* shall establish a time and place for a hearing on the matter.
36 The hearing shall be conducted in accordance with the provisions of the
37 Kansas administrative procedure act.

38 (b) Upon the completion of the hearing, the presiding officer shall
39 determine whether the claim for unpaid wages is a valid claim under
40 K.S.A. 44-313 through 44-326, and amendments thereto. If the presiding
41 officer determines the claim for unpaid wages is valid, the amount of
42 unpaid wages owed together with any damages which may be assessed
43 under K.S.A. 44-315 and amendments thereto, if applicable, also shall be

1 determined by the presiding officer. If the presiding officer determines
2 the claim for unpaid wages is valid, the presiding officer shall order that
3 the unpaid wages and any applicable damages be paid by the party re-
4 sponsible for their payment. Any initial order under this section shall be
5 reviewed by the secretary ~~or the secretary's authorized representative~~ in
6 accordance with K.S.A. 77-527 and amendments thereto. The decision of
7 the secretary ~~or the secretary's authorized representative~~ shall be final
8 and the amount of any unpaid wages and applicable damages determined
9 by the secretary ~~or the secretary's authorized representative~~ to be valid
10 shall be due and payable unless judicial review is sought within the time
11 allowed by law.

12 (c) Any agency action under this section is subject to review in ac-
13 cordance with the act for judicial review and civil enforcement of agency
14 actions.

15 Sec. 14. On and after July 1, 2001, K.S.A. 44-1005 is hereby
16 amended to read as follows: 44-1005. (a) Any person claiming to be ag-
17 grieved by an alleged unlawful employment practice or by an alleged
18 unlawful discriminatory practice, and who can articulate a prima facie
19 case pursuant to a recognized legal theory of discrimination, may, per-
20 sonally or by an attorney-at-law, make, sign and file with the commission
21 a verified complaint in writing, articulating the prima facie case, which
22 shall also state the name and address of the person, employer, labor or-
23 ganization or employment agency alleged to have committed the unlawful
24 employment practice complained of or the name and address of the per-
25 son alleged to have committed the unlawful discriminatory practice com-
26 plained of, and which shall set forth the particulars thereof and contain
27 such other information as may be required by the commission.

28 (b) The commission upon its own initiative or the attorney general
29 may, in like manner, make, sign and file such complaint. Whenever the
30 attorney general has sufficient reason to believe that any person as herein
31 defined is engaged in a practice of discrimination, segregation or sepa-
32 ration in violation of this act, the attorney general may make, sign and
33 file a complaint. Any employer whose employees or some of whom, refuse
34 or threaten to refuse to cooperate with the provisions of this act, may file
35 with the commission a verified complaint asking for assistance by concil-
36 iation or other remedial action.

37 (c) Whenever any problem of discrimination because of race, relig-
38 ion, color, sex, disability, national origin or ancestry arises, or whenever
39 the commission has, in its own judgment, reason to believe that any per-
40 son has engaged in an unlawful employment practice or an unlawful dis-
41 criminatory practice in violation of this act, or has engaged in a pattern
42 or practice of discrimination, the commission may conduct an investiga-
43 tion without filing a complaint and shall have the same powers during

1 such investigation as provided for the investigation of complaints. The
2 person to be investigated shall be advised of the nature and scope of such
3 investigation prior to its commencement. The purpose of the investigation
4 shall be to resolve any such problems promptly. In the event such prob-
5 lems cannot be resolved within a reasonable time, the commission may
6 issue a complaint whenever the investigation has revealed a violation of
7 the Kansas act against discrimination has occurred. The information gath-
8 ered in the course of the first investigation may be used in processing the
9 complaint.

10 (d) After the filing of any complaint by an aggrieved individual, by
11 the commission, or by the attorney general, the commission shall, within
12 seven days after the filing of the complaint, serve a copy on each of the
13 parties alleged to have violated this act, and shall designate one of the
14 commissioners to make, with the assistance of the commission's staff,
15 prompt investigation of the alleged act of discrimination. If the commis-
16 sioner shall determine after such investigation that no probable cause
17 exists for crediting the allegations of the complaint, such commissioner,
18 within 10 business days from such determination, shall cause to be issued
19 and served upon the complainant and respondent written notice of such
20 determination.

21 (e) If such commissioner after such investigation, shall determine that
22 probable cause exists for crediting the allegations for the complaint, the
23 commissioner or such other commissioner as the commission may des-
24 ignate, shall immediately endeavor to eliminate the unlawful employment
25 practice or the unlawful discriminatory practice complained of by con-
26 ference and conciliation. The complainant, respondent and commission
27 shall have 45 days from the date respondent is notified in writing of a
28 finding of probable cause to enter into a conciliation agreement signed
29 by all parties in interest. The parties may amend a conciliation agreement
30 at any time prior to the date of entering into such agreement. Upon
31 agreement by the parties the time for entering into such agreement may
32 be extended. The members of the commission and its staff shall not dis-
33 close what has transpired in the course of such endeavors.

34 (f) In case of failure to eliminate such practices by conference and
35 conciliation, or in advance thereof, if in the judgment of the commissioner
36 or the commission circumstances so warrant, the commissioner or the
37 commission shall commence a hearing in accordance with the provisions
38 of the Kansas administrative procedure act naming as parties the com-
39 plainant and the person, employer, labor organization, employment
40 agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent. A copy of the complaint shall be served
41 on the respondent. At least four commissioners, ~~a staff hearing examiner~~
42 ~~or a contract hearing examiner~~ *or a presiding officer from the office of*

1 *administrative hearings* shall be designated as the presiding officer. The
2 place of such hearing shall be in the county where respondent is doing
3 business and the acts complained of occurred.

4 (g) The complainant or respondent may apply to the presiding officer
5 for the issuance of a subpoena for the attendance of any person or the
6 production or examination of any books, records or documents pertinent
7 to the proceeding at the hearing. Upon such application the presiding
8 officer shall issue such subpoena.

9 (h) The case in support of the complaint shall be presented before
10 the presiding officer by one of the commission's attorneys or agents, or
11 by private counsel, if any, of the complainant, and the commissioner who
12 shall have previously made the investigation shall not participate in the
13 hearing except as a witness. Any endeavors at conciliation shall not be
14 received in evidence.

15 (i) Any complaint filed pursuant to this act must be so filed within six
16 months after the alleged act of discrimination, unless the act complained
17 of constitutes a continuing pattern or practice of discrimination in which
18 event it will be from the last act of discrimination. Complaints filed with
19 the commission on or after July 1, 1996, may be dismissed by the com-
20 mission on its own initiative, and shall be dismissed by the commission
21 upon the written request of the complainant, if the commission has not
22 issued a finding of probable cause or no probable cause or taken other
23 administrative action dismissing the complaint within 300 days of the
24 filing of the complaint. The commission shall mail written notice to all
25 parties of dismissal of a complaint within five days of dismissal. Com-
26 plaints filed with the commission before July 1, 1996, shall be dismissed
27 by the commission upon the written request of the complainant, if the
28 commission has not issued a finding of probable cause or no probable
29 cause or taken other administrative action dismissing the complaint within
30 300 days of the filing of the complaint. Any such dismissal of a complaint
31 in accordance with this section shall constitute final action by the com-
32 mission which shall be deemed to exhaust all administrative remedies
33 under the Kansas act against discrimination for the purpose of allowing
34 subsequent filing of the matter in court by the complainant, without the
35 requirement of filing a petition for reconsideration pursuant to K.S.A. 44-
36 1010 and amendments thereto. Dismissal of a complaint in accordance
37 with this section shall not be subject to appeal or judicial review by any
38 court under the provisions of K.S.A. 44-1011 and amendments thereto.
39 The provisions of this section shall not apply to complaints alleging dis-
40 criminatory housing practices filed with the commission pursuant to
41 K.S.A. 44-1015 et seq. and amendments thereto.

42 (j) The respondent may file a written verified answer to the complaint
43 and appear at such hearing in person or otherwise, with or without coun-

1 sel, and submit testimony. The complainant shall appear at such hearing
2 in person, with or without counsel, and submit testimony. The presiding
3 officer or the complainant shall have the power reasonably and fairly to
4 amend any complaint, and the respondent shall have like power to amend
5 such respondent's answer. The presiding officer shall be bound by the
6 rules of evidence prevailing in courts of law or equity, and only relevant
7 evidence of reasonable probative value shall be received.

8 (k) If the presiding officer finds a respondent has engaged in or is
9 engaging in any unlawful employment practice or unlawful discriminatory
10 practice as defined in this act, the presiding officer shall render an order
11 requiring such respondent to cease and desist from such unlawful em-
12 ployment practice or such unlawful discriminatory practice and to take
13 such affirmative action, including but not limited to the hiring, reinstatement,
14 or upgrading of employees, with or without back pay, and the admission
15 or restoration to membership in any respondent labor organizations; the admission
16 to and full and equal enjoyment of the goods, services, facilities, and accommodations
17 offered by any respondent place of public accommodation denied in violation of this act, as, in the judgment
18 of the presiding officer, will effectuate the purposes of this act, and including a requirement
19 for report of the manner of compliance. Such order may also include an award of damages
20 for pain, suffering and humiliation which are incidental to the act of discrimination, except
21 that an award for such pain, suffering and humiliation shall in no event exceed
22 the sum of \$2,000.

23 (l) Any state, county or municipal agency may pay a complainant back
24 pay if it has entered into a conciliation agreement for such purposes with
25 the commission, and may pay such back pay if it is ordered to do so by
26 the commission.

27 (m) If the presiding officer finds that a respondent has not engaged
28 in any such unlawful employment practice, or any such unlawful discriminatory
29 practice, the presiding officer shall render an order dismissing the
30 complaint as to such respondent.

31 (n) The commission shall review an initial order rendered under sub-
32 section (k) or (m). In addition to the parties, a copy of any final order
33 shall be served on the attorney general and such other public officers as
34 the commission may deem proper.

35 (o) The commission shall, except as otherwise provided, establish
36 rules of practice to govern, expedite and effectuate the foregoing procedure
37 and its own actions thereunder. The rules of practice shall be available,
38 upon written request, within 30 days after the date of adoption.

39 Sec. 15. On and after July 1, 2004, K.S.A. 49-606 is hereby amended
40 to read as follows: 49-606. (a) The director, with the approval of the
41 commission, may deny issuance or renewal of a license for repeated or
42
43

1 willful violation of the provisions of this act or for failure to comply with
2 any provision of a reclamation plan.

3 (b) The director, with the approval of the commission, may suspend
4 or revoke a license for repeated or willful violation of any of the provisions
5 of this act or for failure to comply with any provision of a reclamation
6 plan. Proceedings for the suspension or revocation of a license pursuant
7 to this section shall be conducted in accordance with the Kansas admin-
8 istrative procedure act by the director or a ~~hearing officer appointed by~~
9 ~~the director~~ *presiding officer from the office of administrative hearings.*

10 Sec. 16. On and after July 1, 2003, K.S.A. 2000 Supp. 65-163 is
11 hereby amended to read as follows: 65-163. (a) (1) No person shall op-
12 erate a public water supply system within the state without a public water
13 supply system permit from the secretary. An application for a public water
14 supply system permit shall be submitted for review and approval prior to
15 construction and shall include: (A) A copy of the plans and specifications
16 for the construction of the public water supply system or the extension
17 thereof; (B) a description of the source from which the water supply is
18 to be derived; (C) the proposed manner of storage, purification or treat-
19 ment for the supply; and (D) such other data and information as required
20 by the secretary of health and environment. No source of water supply
21 in substitution for or in addition to the source described in the application
22 or in any subsequent application for which a public water supply system
23 permit is issued shall be used by a public water supply system, nor shall
24 any change be made in the manner of storage, purification or treatment
25 of the water supply without an additional public water supply system
26 permit obtained in a manner similar to that prescribed by this section
27 from the secretary.

28 (2) Whenever application is made to the secretary for a public water
29 supply system permit under the provisions of this section, it shall be the
30 duty of the secretary to examine the application without delay and, as
31 soon as possible thereafter, to grant or deny the public water supply sys-
32 tem permit subject to any conditions which may be imposed by the sec-
33 retary to protect the public health and welfare.

34 (3) The secretary may adopt rules and regulations establishing a pro-
35 gram of annual certification by public water supply systems that have staff
36 qualified to approve the extension of distribution systems without the
37 necessity of securing an additional permit for the extension provided the
38 plans for the extension are prepared by a professional engineer as defined
39 by K.S.A. 74-7003, and amendments thereto.

40 (b) (1) Whenever a complaint is made to the secretary by any city of
41 the state, by a local health officer, or by a county or joint board of health
42 concerning the sanitary quality of any water supplied to the public within
43 the county in which the city, local health officer or county or joint board

1 of health is located, the secretary shall investigate the public water supply
2 system about which the complaint is made. Whenever the secretary has
3 reason to believe that a public water supply system within the state is
4 being operated in violation of an applicable state law or an applicable rule
5 and regulation of the secretary, the secretary may investigate the public
6 water supply system.

7 (2) Whenever an investigation of any public water supply system is
8 undertaken by the secretary, it shall be the duty of the supplier of water
9 under investigation to furnish to the secretary information to determine
10 the sanitary quality of the water supplied to the public and to determine
11 compliance with applicable state laws and rules and regulations. The sec-
12 retary may issue an order requiring changes in the source or sources of
13 the public water supply system or in the manner of storage, purification
14 or treatment utilized by the public water supply system before delivery
15 to consumers, or distribution facilities, collectively or individually, as may
16 in the secretary's judgment be necessary to safeguard the sanitary quality
17 of the water and bring about compliance with applicable state law and
18 rules and regulations. The supplier of water shall comply with the order
19 of the secretary.

20 (c) (1) As used in this subsection (c), "municipal water treatment
21 residues" means any solid, semisolid or liquid residue generated during
22 the treatment of water in a public water supply system treatment works.

23 (2) A public water supply system may place or store municipal water
24 treatment residues resulting from sedimentation, coagulation or softening
25 treatment processes in basins on land under the ownership and control
26 of the public water supply system operator provided that such storage or
27 placement is approved and permitted by the secretary under this section
28 as part of the public water supply system.

29 (3) The secretary shall adopt uniform and comprehensive rules and
30 regulations for the location, design and operation of such basins. Such
31 rules and regulations shall require permit applications by the public water
32 suppliers for such basins to include a copy of the plans and specifications
33 for the location and construction of each basin, the means of conveyance
34 of the treatment residues to such basins, the content of treatment resi-
35 dues, the proposed method of basin operation and closure, the method
36 of any anticipated expansion and any other data and information required
37 by the secretary.

38 (4) Whenever complaint is made to the secretary by the mayor of any
39 city of the state, by a local health officer or by a county or joint board of
40 health, or whenever an investigation is undertaken at the initiative of the
41 secretary, relating to any alleged violation of the provisions of the permit
42 for placement or storage of municipal water treatment residues in such
43 basins, the public water supply system operator shall furnish all infor-

1 mation the secretary requires. If the secretary finds that there is any
2 violation of the terms of the permit, that the means of placement and
3 storage exceed the terms of the permit or that any other condition exists
4 by reason of the means of placement and storage that may be detrimental
5 to the health of any inhabitants of the state or to the environment, the
6 secretary shall have the authority to issue an order amending the permit
7 or otherwise requiring the operator to perform remedial measures to
8 curtail or prevent such detrimental conditions.

9 (d) *Orders of the secretary under this section, and hearings thereon,*
10 *shall be subject to the provisions of the Kansas administrative procedure*
11 *act.* Any action of the secretary pursuant to this section is subject to review
12 in accordance with the act for judicial review and civil enforcement of
13 agency actions. The court on review shall hear the case without delay.

14 (e) The secretary shall establish by rule and regulation a system of
15 fees for the inspection and regulation of public water supplies. No such
16 fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public
17 water supply system. All such fees shall be paid quarterly in the manner
18 provided for fees imposed on retail sales by public water supply systems
19 pursuant to K.S.A. 82a-954 and amendments thereto. The secretary shall
20 remit to the state treasurer all moneys collected for such fees. Upon
21 receipt thereof, the state treasurer shall deposit the entire amount in the
22 state treasury and credit it to the public water supply fee fund created by
23 K.S.A. 65-163c and amendments thereto.

24 (f) There is hereby created an advisory committee to make recom-
25 mendations regarding: (1) Fees to be adopted by the secretary under
26 subsection (e); (2) means of strengthening on-site technical assistance to
27 public water supply systems; (3) standards for on-site and classroom water
28 treatment operator certification programs; (4) other matters concerning
29 public water supplies; and (5) to advise the secretary regarding expendi-
30 ture of moneys in the public water supply fee fund created by K.S.A. 65-
31 163c and amendments thereto. Such advisory committee shall consist of
32 one member appointed by the secretary to represent the department of
33 health and environment, one member appointed by the director of the
34 Kansas water office to represent such office and two members appointed
35 by the secretary as follows: One from three nominations submitted by the
36 Kansas section of the American waterworks association, and one from
37 three nominations submitted by the Kansas rural water association. Mem-
38 bers of the advisory committee shall serve without compensation or re-
39 imbursement of expenses. The advisory committee shall meet at least four
40 times each year on call of the secretary or a majority of the members of
41 the committee.

42 Sec. 17. On and after July 1, 2003, K.S.A. 65-163a is hereby amended
43 to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver

1 water through pipes and mains to any premises where a condition exists
2 which might lead to the contamination of the public water supply system
3 and may continue to refuse the delivery of water to the premises until
4 the condition is remedied.

5 (b) The secretary may order a supplier of water: (1) To cease the
6 delivery of water through pipes and mains to a premise or premises where
7 a condition exists which might lead to the contamination of the public
8 water supply system; or (2) to cease an activity which would result in a
9 violation of the state primary drinking water standards; or (3) to cease an
10 activity which results in a continuing violation of the state primary drink-
11 ing water standards; or (4) to comply with any combination of these or-
12 ders. The supplier of water shall immediately comply with an order issued
13 by the secretary under this section.

14 (c) *Orders of the secretary under this section, and hearings thereon,*
15 *shall be subject to the provisions of the Kansas administrative procedure*
16 *act.* Any action of the secretary pursuant to this section is subject to review
17 in accordance with the act for judicial review and civil enforcement of
18 agency actions. The court on review shall hear the appeal without delay.

19 Sec. 18. On and after July 1, 2003, K.S.A. 2000 Supp. 65-525 is
20 hereby amended to read as follows: 65-525. (a) Information in the pos-
21 session of the department of health and environment received pursuant
22 to K.S.A. 65-501 *et seq.* regarding child care facilities, maternity centers
23 or family day care homes shall not be released publicly in a manner that
24 would identify individuals, unless required by law.

25 (b) The name, address and telephone number of a child care facility,
26 maternity center or family day care home shall not be released publicly
27 unless required by law.

28 (c) Information that cannot be released by subsection (a) or (b) may
29 be released to: (1) An agency or organization authorized to receive notice
30 under K.S.A. 65-506, and amendments thereto; (2) a criminal justice
31 agency; (3) any state or federal agency that provides child care services
32 or provides child protective services; or (4) any federal agency for the
33 purposes of compliance with federal funding requirements.

34 (d) Any state or federal agency receiving information under subsec-
35 tion (a) or (b) shall not disseminate the information without the consent
36 of the person whose information will be disseminated unless required by
37 law. Any person, other than a state or federal agency, receiving infor-
38 mation under subsection (a) or (b) shall not disseminate the information
39 without the consent of the person whose name will be disseminated un-
40 less required by law.

41 (e) In any hearings conducted under the licensing or regulation pro-
42 visions of K.S.A. 65-501 *et seq.* and amendments thereto, the ~~hearing~~
43 *presiding* officer may close the hearing to the public to prevent public

1 disclosure of matters relating to persons restricted by other laws.

2 Sec. 19. On and after July 1, 2003, K.S.A. 2000 Supp. 65-526 is
3 hereby amended to read as follows: 65-526. (a) The secretary of health
4 and environment, in addition to any other penalty prescribed under article
5 5 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory of
6 the provisions thereof or supplemental thereto, may assess a civil fine,
7 after proper notice and an opportunity to be heard *in accordance with*
8 *the Kansas administrative procedure act*, against a licensee or registrant
9 for each violation of such provisions or rules and regulations adopted
10 pursuant thereto which affect significantly and adversely the health, safety
11 or sanitation of children in a child care facility or family day care home.
12 Each civil fine assessed under this section shall not exceed \$500. In the
13 case of a continuing violation, every day such violation continues shall be
14 deemed a separate violation.

15 (b) All fines assessed and collected under this section shall be remit-
16 ted promptly to the state treasurer. Upon receipt thereof, the state trea-
17 surer shall deposit the entire amount in the state treasury and credit it to
18 the state general fund.

19 Sec. 20. On and after July 1, 2003, K.S.A. 65-673 is hereby amended
20 to read as follows: 65-673. (a) The authority to promulgate rules and
21 regulations for the efficient enforcement of this act is hereby vested in
22 the secretary. The secretary is hereby authorized to make the regulations
23 promulgated under this act conform, insofar as practicable, with those
24 promulgated under the federal act.

25 (b) Hearings authorized or required by this act shall be conducted by
26 the secretary or by a ~~hearing officer designated by the secretary~~ *presiding*
27 *officer from the office of administrative hearings* for this purpose. The
28 secretary shall prescribe by rule and regulation the procedure for con-
29 ducting hearings. The ~~hearing~~ *presiding* officer shall have the same pow-
30 ers in conducting a hearing as the secretary. In conducting a hearing the
31 secretary or the ~~hearing~~ *presiding* officer may issue subpoenas to compel
32 the attendance of witnesses, administer oaths, take testimony, require the
33 production of books, papers, records, correspondence or other docu-
34 ments which the secretary or the ~~hearing~~ *presiding* officer deems relevant
35 and render decisions. In case of the refusal of any person to comply with
36 any subpoena issued under this section or to testify with respect to any
37 matter which the person may be lawfully questioned, the district court of
38 any county on application of the secretary may issue an order requiring
39 such person to comply with the subpoena and to testify, and any failure
40 to obey the order of the court may be punished by the court as a contempt
41 thereof. Notwithstanding the foregoing provisions of this subsection,
42 hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and
43 amendments thereto, shall be conducted in accordance with the provi-

1 sions of the Kansas administrative procedure act.

2 (c) Before promulgating any rules and regulations contemplated by
3 K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments
4 thereto, the secretary shall give appropriate notice of the proposal and of
5 the time and place for a hearing as provided in this act. Such rules and
6 regulations may be amended or revoked in the same manner as is pro-
7 vided by law for adoption.

8 Sec. 21. On and after July 1, 2004, K.S.A. 65-720a is hereby amended
9 to read as follows: 65-720a. (a) The term "frozen dairy dessert" means
10 and includes products containing milk or cream and other ingredients
11 which are frozen or semi-frozen prior to consumption, such as ice cream,
12 ice milk or sherbet, including frozen dairy desserts for special dietary
13 purposes.

14 (b) It shall be the duty of the ~~state board~~ *secretary* of agriculture, and
15 it is hereby authorized, to prescribe and adopt rules and regulations es-
16 tablishing definitions and standards of identity and quality for frozen dairy
17 desserts. Prior to the adoption of any rules and regulations establishing
18 definitions and standards for these products, the ~~board or its authorized~~
19 ~~representative~~ *secretary* shall give notice to all known interested persons
20 of the time and place of a hearing, at which time any interested person
21 may appear and present such person's views. The ~~board may appoint a~~
22 ~~hearing officer to~~ *secretary shall* conduct such hearing and make
23 recommendations.

24 (c) The ~~board~~ *secretary*, in adopting rules and regulations establishing
25 such definitions and standards, shall take into consideration the following
26 as guidelines for establishment of such standards: (a) Ingredients; (b)
27 pasteurization; (c) acidity; (d) butterfat, milk solids and total food solids
28 content; (e) weight per unit of measurement; (f) flavor; and flavor label-
29 ing; (g) coloring, and (h) the standards of other states and those adopted
30 under the federal food, drug and cosmetic act, for the sake of uniformity.

31 (d) Nothing in this section or in any rules and regulations adopted
32 pursuant to this section shall prohibit a licensed food service establish-
33 ment from preparing ice cream for sale to customers of the food service
34 establishment so long as the ice cream mix or mixture is cooked, and if
35 such ice cream mix or mixture contains eggs is cooked according to federal
36 food and drug administration general provisions for making frozen des-
37 serts using a high temperature, short-term method, all dairy products
38 used in such mixture are pasteurized and the bacteria and coliform quality
39 standards for the ice cream are within the limits established under K.S.A.
40 65-720f and amendments thereto.

41 Sec. 22. On and after July 1, 2004, K.S.A. 65-747 is hereby amended
42 to read as follows: 65-747. It shall be unlawful for any person required to
43 pay or remit a fee under this act to sell, offer for sale, receive or distribute

1 grade A raw milk for pasteurization, grade A pasteurized milk or grade A
2 pasteurized milk products within this state without holding a valid permit
3 to do so from the state dairy commissioner. Such permit shall be issued
4 upon application to the dairy commissioner, and no fee shall be charged
5 therefor. Whenever the dairy commissioner shall determine that any per-
6 son holding such permit has failed to pay or remit any required fee or
7 fees, or any part thereof, or has failed to submit a required report, or has
8 submitted a false report, the commissioner may, upon due notice and a
9 hearing thereon, revoke or suspend such permit. Any such hearing shall
10 be held by the ~~state board~~ *secretary* of agriculture through the dairy
11 commissioner or ~~the dairy commissioner's authorized representative or~~
12 ~~by a hearing officer, duly appointed by the board through the dairy com-~~
13 ~~missioner or the dairy commissioner's authorized representative~~ *a presid-*
14 *ing officer from the office of administrative hearings.* The required notice
15 and hearing shall be in accordance with the provisions of the Kansas
16 administrative procedure act.

17 Sec. 23. On and after July 1, 2004, K.S.A. 65-753 is hereby amended
18 to read as follows: 65-753. (a) If the ~~state board~~ *secretary* of agriculture
19 through the dairy commissioner or ~~the dairy commissioner's authorized~~
20 ~~representative~~ determines after notice and opportunity for a hearing that
21 any person has engaged in or is engaging in any act or practice constituting
22 a violation of any provision of this act or any rule and regulation or order
23 issued thereunder, the ~~state board~~ *secretary* of agriculture through the
24 dairy commissioner by written order, may require that such person cease
25 and desist from the unlawful act or practice and take such affirmative
26 action as in the judgment of the ~~state board~~ *secretary* of agriculture
27 through the dairy commissioner will carry out the purposes of the violated
28 or potentially violated provision of this act or rule and regulation or order
29 issued thereunder.

30 (b) If the ~~state board~~ *secretary* of agriculture through the dairy com-
31 missioner makes written findings of fact that there is a situation involving
32 an immediate danger to the public health, safety or welfare or that the
33 public interest will be irreparably harmed by delay in issuing an order
34 under subsection (a), the ~~state board~~ *secretary* of agriculture through the
35 dairy commissioner may issue an emergency temporary cease and desist
36 order. Such order, even when not an order within the meaning of K.S.A.
37 77-502, and amendments thereto, shall be subject to the same procedures
38 as an emergency order issued under K.S.A. 77-536, and amendments
39 thereto. Upon the entry of such an order, the ~~state board~~ *secretary* of
40 agriculture through the dairy commissioner shall promptly notify the per-
41 son subject to the order that: (1) It has been entered; (2) the reasons
42 therefor; and (3) that upon written request within 15 days after service
43 of the order the matter will be set for a hearing which shall be conducted

1 in accordance with the provisions of the Kansas administrative procedure
2 act. If no hearing is requested and none is ordered by the dairy commis-
3 sioner, the order will remain in effect until it is modified or vacated by
4 the ~~state board~~ *secretary* of agriculture through the dairy commissioner.
5 If a hearing is requested or ordered, the ~~state board~~ *secretary* of agricul-
6 ture through the dairy commissioner after giving notice of and opportu-
7 nity for hearing to the person subject to the order, shall by written find-
8 ings of fact and conclusions of law vacate, modify or make permanent the
9 order.

10 Sec. 24. On and after July 1, 2003, K.S.A. 65-2305 is hereby
11 amended to read as follows: 65-2305. (a) The secretary of health and
12 environment shall have the power and authority and is hereby charged
13 with the duty of enforcing the provisions of this act, and the secretary is
14 hereby authorized and directed to make, amend or revoke rules and reg-
15 ulations and orders for the efficient enforcement of this act.

16 (b) In the event of findings by the secretary that there is an existing
17 or imminent shortage of any ingredient required to enrich flour, white
18 bread or rolls in order to comply with this act, and that because of such
19 shortage the sale and distribution of flour or white bread or rolls may be
20 impeded by the enforcement of this act, the secretary shall issue an order,
21 to be effective immediately upon issuance, permitting the omission of
22 such ingredient from flour or white bread or rolls; and if the secretary
23 finds it necessary or appropriate, excepting such foods from the labeling
24 requirements of this act until the further order of the secretary. Any such
25 findings may be made without hearing on the basis of an order or of
26 factual information supplied by the appropriate agency or officer. In the
27 absence of any such order of the appropriate agency or factual informa-
28 tion supplied by it, the secretary on the secretary's own motion may, and
29 upon receiving the sworn statement of 10 or more persons subject to this
30 act that they believe such a shortage exists or is imminent shall hold a
31 public hearing as provided in subsection (f) with respect thereto, at which
32 any interested person may present evidence; and shall make findings
33 based upon the evidence presented.

34 (c) Whenever the secretary has reason to believe that such shortage
35 no longer exists, the secretary shall hold a public hearing as provided in
36 subsection (f), after notice shall have been given as provided in K.S.A.
37 77-421 prior to adoption of rules and regulations, at which any interested
38 person may present evidence, and the secretary shall make findings based
39 upon the evidence so presented. If the secretary's findings be that such
40 shortage no longer exists, the secretary shall issue an order revoking such
41 previous order. Undisposed floor stocks of flour on hand at the effective
42 date of such revocation order, or flour manufactured prior to such effec-
43 tive date, for sale in this state may thereafter be lawfully sold or disposed

1 of.

2 (d) All orders and rules and regulations adopted by the secretary pur-
3 suant to this act shall become effective as provided by law.

4 (e) For the purposes of this act, the secretary is authorized to take
5 samples for analysis and to conduct examinations and investigations
6 through any officers or employees under the secretary's supervision, and
7 all such officers and employees shall have authority to enter, at reasonable
8 times, any factory, mill, warehouse, shop or establishment where flour,
9 white bread or rolls are manufactured, processed, packed, sold, or held,
10 or any vehicle being used for the transportation thereof, and to inspect
11 any such place or vehicle and any flour, white bread or rolls therein, and
12 all pertinent equipment, materials, containers and labeling.

13 ~~(f) The secretary shall prescribe by rule and regulation the procedure~~
14 ~~for conducting a hearing under this section and may designate a hearing~~
15 ~~officer to conduct the hearing. The hearing officer shall have the same~~
16 ~~powers in conducting the hearing as the secretary. All administrative pro-~~
17 ~~ceedings conducted pursuant to article 23 of chapter 65 of the Kansas~~
18 ~~Statutes Annotated, and amendments thereto, shall be conducted in ac-~~
19 ~~cordance with the provisions of the Kansas administrative procedures act~~
20 ~~and the act for judicial review and civil enforcement of agency actions.~~

21 In conducting the hearing the secretary or the ~~hearing~~ *presiding* officer
22 may issue subpoenas to compel the attendance of witnesses, administer
23 oaths, take testimony, require the production of books, papers, records,
24 correspondence or other documents which the secretary or the ~~hearing~~
25 *presiding* officer deems relevant and render decisions. In case of the
26 refusal of any person to comply with any subpoena issued under this
27 section or to testify with respect to any matter *about* which the person
28 may be lawfully questioned, the district court of any county on application
29 of the secretary may issue an order requiring such person to comply with
30 the subpoena and to testify, and any failure to obey the order of the court
31 may be punished by the court as a contempt thereof.

32 Sec. 25. On and after July 1, 2003, K.S.A. 65-3483 is hereby
33 amended to read as follows: 65-3483. (a) If, within 150 days after receipt
34 of an application, the secretary has not denied the application, the sec-
35 retary shall notify the board of county commissioners and the governing
36 bodies of all cities located within a ten-mile radius of the proposed facility.
37 The secretary also shall notify the state corporation commission and the
38 secretary of wildlife and parks of the proposed facility.

39 (b) If the secretary determines that such application should be ap-
40 proved, the secretary shall immediately notify the county commissioners
41 and the governing bodies of all cities located within a ten-mile radius of
42 the proposed facility.

43 (c) Within 10 days after the secretary has determined that such ap-

1 plication should be approved, the secretary shall:

2 (1) Set a date and arrange for publication of notice of a public hearing
3 in a newspaper having major circulation in the vicinity of the proposed
4 facility. Such hearing shall be in the county in which the proposed facility
5 will be located. Additional hearings may be held at such other places as
6 the secretary deems suitable. At such hearing or hearings, the applicant
7 may present testimony in favor of the application. Any person may appear
8 or be represented by counsel to present testimony in support of or op-
9 position to the application. The public notice shall:

10 (A) Contain a map indicating the location of the proposed facility, a
11 description of the proposed action and the location where the application
12 may be reviewed and where copies may be obtained.

13 (B) Identify the time, place and location for the public hearing held
14 to receive public comment and input on the application.

15 (2) Publish the notice not less than 30 days before the date of the
16 public hearing.

17 (d) Comment and input on the proposed facility may be presented
18 orally or in writing at the public hearing, and shall continue to be accepted
19 in writing by the secretary for 15 days after the public hearing date.

20 (e) The secretary shall consider the impact of the proposed facility
21 on the surrounding area in which it is to be located and make a final
22 determination on the application.

23 (f) The secretary shall consider, at a minimum:

24 (1) The risk and impact of accident during the transportation of PCB;

25 (2) the risk and impact of contamination of ground and surface water
26 by leaching and runoff from the proposed facility;

27 (3) the risk of fires or explosions from improper storage and disposal
28 methods;

29 (4) the impact on the surrounding area where the proposed facility
30 is to be located in terms of the health, safety, cost and consistency with
31 local planning and existing development. The secretary also shall consider
32 local ordinances, permits or other requirements and their potential re-
33 lationship to the proposed facility;

34 (5) an evaluation of measures to mitigate adverse effects;

35 (6) the nature of the probable environmental impact including the
36 specification of the predictable adverse effects on the following:

37 (A) The natural environment and ecology;

38 (B) public health and safety;

39 (C) scenic, historic, cultural and recreational value; and

40 (D) water and air quality and wildlife.

41 (g) The secretary also shall consider the concerns and objections sub-
42 mitted by the public. The secretary shall facilitate efforts to provide that
43 the concerns and objections are mitigated by establishing additional stip-

1 ulations specifically applicable to the proposed site and operation at that
2 site. The secretary, to the fullest extent practicable, shall integrate by
3 stipulation the provisions of the local ordinances, permits or
4 requirements.

5 (h) The secretary may seek the advice, which shall be given in writing
6 and entered into the public record of the public hearing, of any person
7 in order to render a decision to approve or deny the application.

8 (i) *The public hearing required under subsection (c) shall be con-*
9 *ducted in accordance with the provisions of the Kansas administrative*
10 *procedure act.*

11 Sec. 26. On and after July 1, 2003, K.S.A. 65-3488 is hereby
12 amended to read as follows: 65-3488. (a) Permits for PCB disposal facil-
13 ities shall be issued for fixed terms not to exceed 10 years.

14 (b) Plans, designs and relevant data for the construction of PCB dis-
15 posal facilities shall be prepared by a professional engineer licensed to
16 practice in Kansas and shall be submitted to the department for approval
17 prior to the construction, modification or operation of such a facility.

18 (c) Permits granted by the secretary, as provided in this act, shall be
19 revocable or subject to suspension whenever the secretary determines
20 that the PCB disposal facility is, or has been constructed in violation of
21 this act or the rules and regulations or standards adopted pursuant to the
22 act, or is creating a hazard to the public health or safety or to the envi-
23 ronment, or for failure to make payment of any fee to any funds created
24 under this act.

25 (d) In case any permit is denied, suspended or revoked any person
26 aggrieved by such decision may request a hearing before the secretary in
27 the same manner provided by K.S.A. 65-3440, and amendments thereto.
28 *Such hearings shall be conducted in accordance with the Kansas admin-*
29 *istrative procedure act.*

30 Sec. 27. On and after July 1, 2003, K.S.A. 65-3490 is hereby
31 amended to read as follows: 65-3490. (a) The secretary or the director of
32 the division of environment, if designated by the secretary, upon a finding
33 that a person has violated any provision of this act or any rule and regu-
34 lation adopted by the secretary pursuant to this act may impose a penalty
35 not to exceed \$10,000 which shall constitute an actual and substantial
36 economic deterrent to the violation for which it is assessed and, in the
37 case of a continuing violation, every day such violation continues shall be
38 deemed a separate violation.

39 (b) No penalty shall be imposed pursuant to this section except after
40 notice of violation and opportunity for hearing upon the written order of
41 the secretary or the director of the division of environment, if designated
42 by the secretary, to the person who committed the violation. The order
43 shall state the violation, the penalty to be imposed and, in the case of an

1 order of the director of the division of environment, the right to appeal
2 to the secretary for a hearing thereon. Any person may appeal an order
3 of the director of the division of environment by making a written request
4 to the secretary for a hearing within 15 days of receipt ~~service~~ of such
5 order. The secretary shall hear the person within 30 days after receipt of
6 such request, unless such time period is waived or extended by written
7 consent of all parties or by a showing of good cause, ~~and shall give not~~
8 ~~less than 10 days' written notice of the time and place of the hearing.~~
9 ~~Within 30 days after such hearing and receipt of briefs or oral arguments,~~
10 ~~unless such time period is waived or extended by written consent of all~~
11 ~~parties or by a showing of good cause, the secretary shall affirm, reverse~~
12 ~~or modify the order of the director and shall specify the reasons therefor.~~
13 ~~Nothing in this act shall require the observance of formal rules of evi-~~
14 ~~dence or pleading at any hearing before the secretary or director. Hear-~~
15 ~~ings under this subsection shall be conducted in accordance with the Kan-~~
16 ~~sas administrative procedure act.~~

17 (c) Any party aggrieved by an order under this section ~~shall have the~~
18 ~~right of appeal in the same manner provided by K.S.A. 65-3440, and~~
19 ~~amendments thereto may obtain review of such order in accordance with~~
20 ~~the act for judicial review and civil enforcement of agency actions.~~

21 Sec. 28. On and after July 1, 2004, K.S.A. 2000 Supp. 66-1,117 is
22 hereby amended to read as follows: 66-1,117. The corporation commis-
23 sion shall prescribe forms of applications for certificates, permits and
24 licenses for the use of prospective applicants and shall make regulations
25 for the filing thereof. The commission may ~~designate one of its attorneys~~
26 ~~use a presiding officer from the office of administrative hearings~~ as a
27 presiding officer for any hearing that may be required concerning any
28 application for a certificate or license and the presiding officer shall make
29 written findings and recommendations to the commission.

30 Sec. 29. On and after July 1, 2003, K.S.A. 2000 Supp. 74-4904 is
31 hereby amended to read as follows: 74-4904. (1) The system may sue and
32 be sued in its official name, but its trustees, officers, employees and agents
33 shall not be personally liable for acts of the system unless such person
34 acted with willful, wanton or fraudulent misconduct or intentionally tor-
35 tious conduct. Any agreement in settlement of litigation involving the
36 system and the investment of moneys of the fund is a public record as
37 provided in K.S.A. 45-215 et seq. and amendments thereto and subject
38 to the provisions of that act. The service of all legal process and of all
39 notices which may be required to be in writing, whether legal proceedings
40 or otherwise, shall be had on the executive secretary at such executive
41 secretary's office. All actions or proceedings directly or indirectly against
42 the system shall be brought in Shawnee county.

43 (2) Any person aggrieved by any order or decision of the board made

1 without a hearing, may, within 30 days after notice of the order or decision
2 of the board make written request to the board for a hearing thereon.
3 The board shall hear such party or parties in accordance with the provi-
4 sions of the Kansas administrative procedure act at its next regular meet-
5 ing or at a special meeting within 60 days after receipt of such request.
6 For the purpose of any hearing under this section, the board may ~~appoint~~
7 ~~one or more presiding officers. Any such presiding officer shall be a mem-~~
8 ~~ber of the board, an employee of the board or any other person designated~~
9 ~~by the board to serve as such presiding officer. Any such appointment~~
10 ~~shall apply to a particular hearing or to a set or class of hearings as spec-~~
11 ~~ified by the board in making such appointment use a presiding officer~~
12 ~~from the office of administrative hearings.~~ The board shall review an initial
13 order resulting from a hearing under this section. Any member of the
14 board who serves as a presiding officer shall be reimbursed for actual and
15 necessary expenses and shall receive compensation in an amount fixed by
16 the board not to exceed the per diem compensation allowable for mem-
17 bers of the board. The board is hereby authorized to enter into a contract
18 with ~~any other person designated by the board to serve as a presiding~~
19 ~~officer who is not a member or employee of the board~~ *the office of ad-*
20 *ministrative hearing* and to provide for reimbursement for actual and
21 necessary expenses and compensation for ~~such person serving as a pre-~~
22 ~~siding officer.~~

23 Sec. 30. On and after July 1, 2003, K.S.A. 2000 Supp. 74-8804 is
24 hereby amended to read as follows: 74-8804. (a) During race meetings,
25 the commission and its designated employees may observe and inspect
26 all racetrack facilities operated by licensees and all racetracks simulcasting
27 races to racetrack facilities in Kansas, including but not limited to all
28 machines, equipment and facilities used for parimutuel wagering.

29 (b) Commission members and ~~hearing presiding officers designated~~
30 ~~by the commission~~ may administer oaths and take depositions to the same
31 extent and subject to the same limitations as would apply if the deposition
32 was in aid of a civil action in the district court.

33 (c) The commission may examine, or cause to be examined by any
34 agent or representative designated by the commission, any books, papers,
35 records or memoranda of any licensee, or of any racetrack or business
36 involved in simulcasting races to racetrack facilities in Kansas, for the
37 purpose of ascertaining compliance with any provision of this act or any
38 rule and regulation adopted hereunder.

39 (d) The commission may issue subpoenas to compel access to or for
40 the production of any books, papers, records or memoranda in the cus-
41 tody or control of any licensee or officer, member, employee or agent of
42 any licensee, or to compel the appearance of any licensee or officer, mem-
43 ber, employee or agent of any licensee, or of any racetrack or business

1 involved in simulcasting races to racetrack facilities in this state, for the
2 purpose of ascertaining compliance with any of the provisions of this act
3 or any rule and regulation adopted hereunder. Subpoenas issued pursuant
4 to this subsection may be served upon individuals and corporations in the
5 same manner provided in K.S.A. 60-304 and amendments thereto for the
6 service of process by any officer authorized to serve subpoenas in civil
7 actions or by the commission or an agent or representative designated by
8 the commission. In the case of the refusal of any person to comply with
9 any such subpoena, the executive director may make application to the
10 district court of any county where such books, papers, records, memo-
11 randa or person is located for an order to comply.

12 (e) The commission shall allocate equitably race meeting dates, rac-
13 ing days and hours to all organization licensees and assign such dates and
14 hours so as to minimize conflicting dates and hours within the same ge-
15 ographic market area.

16 (f) The commission shall have the authority, after notice and an op-
17 portunity for hearing in accordance with rules and regulations adopted
18 by the commission, to exclude, or cause to be expelled, from any race
19 meeting or racetrack facility, or to prohibit a licensee from conducting
20 business with any person:

21 (1) Who has violated the provisions of this act or any rule and regu-
22 lation or order of the commission;

23 (2) who has been convicted of a violation of the racing or gambling
24 laws of this or any other state or of the United States or has been adju-
25 dicated of committing as a juvenile an act which, if committed by an adult,
26 would constitute such a violation; or

27 (3) whose presence, in the opinion of the commission, reflects ad-
28 versely on the honesty and integrity of horse or greyhound racing or
29 interferes with the orderly conduct of a race meeting.

30 (g) The commission shall review and approve all proposed construc-
31 tion and major renovations to racetrack facilities owned or leased by
32 licensees.

33 (h) The commission shall review and approve all proposed contracts
34 with racetracks or businesses involved in simulcasting races to racetrack
35 facilities in Kansas.

36 (i) The commission may suspend a horse or greyhound from partic-
37 ipation in races if such horse or greyhound has been involved in any
38 violation of the provisions of this act or any rule and regulation or order
39 of the commission.

40 (j) The commission, within 72 hours after any action taken by a stew-
41 ard or racing judge and upon appeal by any interested party or upon its
42 own initiative, may overrule any decision of a steward or racing judge,
43 other than a decision regarding disqualifications for interference during

1 the running of a race, if the preponderance of evidence indicates that:

- 2 (1) The steward or racing judge mistakenly interpreted the law;
- 3 (2) new evidence of a convincing nature is produced; or
- 4 (3) the best interests of racing and the state may be better served.

5 A decision of the commission to overrule any decision of a steward or
6 racing judge shall not change the distribution of parimutuel pools to the
7 holders of winning tickets. A decision of the commission which would
8 affect the distribution of purses in any race shall not result in a change
9 in that distribution unless a written claim is submitted to the commission
10 within 48 hours after completion of the contested race by one of the
11 owners or trainers of a horse or greyhound which participated in such
12 race and a preponderance of evidence clearly indicates to the commission
13 that one or more of the grounds for protest, as provided for in rules and
14 regulations of the commission, has been substantiated.

15 (k) The commission, after notice and a hearing in accordance with
16 rules and regulations adopted by the commission, may impose a civil fine
17 not exceeding \$5,000 for each violation of any provision of this act, or any
18 rule and regulation of the commission, for which no other penalty is
19 provided.

20 (l) The commission shall adopt rules and regulations specifying and
21 regulating:

22 (1) Those drugs and medications which may be administered, and
23 possessed for administration, to a horse or greyhound within the confines
24 of a racetrack facility; and

25 (2) that equipment for administering drugs or medications to horses
26 or greyhounds which may be possessed within the confines of a racetrack
27 facility.

28 (m) The commission may adopt rules and regulations providing for
29 the testing of any licensees of the commission, and any officers, directors
30 and employees thereof, to determine whether they are users of any con-
31 trolled substances.

32 (n) The commission shall require fingerprinting of all persons nec-
33 essary to verify qualification for employment by the commission or to
34 verify qualification for any license, including a simulcasting license, issued
35 pursuant to this act. The commission shall submit such fingerprints to the
36 Kansas bureau of investigation and to the federal bureau of investigation
37 for the purposes of verifying the identity of such persons and obtaining
38 records of criminal arrests and convictions.

39 (o) The commission may receive from commission security person-
40 nel, the Kansas bureau of investigation or other criminal justice agencies,
41 including but not limited to the federal bureau of investigation and the
42 federal internal revenue service, such criminal history record information
43 (including arrest and nonconviction data), criminal intelligence informa-

1 tion and information relating to criminal and background investigations
2 as necessary for the purpose of determining qualifications of licensees of
3 the commission, employees of the commission, applicants for employ-
4 ment by the commission, and applicants for licensure by the commission,
5 including applicants for simulcasting licenses. Upon the written request
6 of the chairperson of the commission, the commission may receive from
7 the district courts such information relating to juvenile proceedings as
8 necessary for the purpose of determining qualifications of employees of
9 and applicants for employment by the commission and determining qual-
10 ifications of licensees of and applicants for licensure by the commission.
11 Such information, other than conviction data, shall be confidential and
12 shall not be disclosed except to members and employees of the commis-
13 sion as necessary to determine qualifications of such licensees, employees
14 and applicants. Any other disclosure of such confidential information is a
15 class A misdemeanor and shall constitute grounds for removal from office,
16 termination of employment or denial, revocation or suspension of any
17 license issued under this act.

18 (p) The commission, in accordance with K.S.A. 75-4319 and amend-
19 ments thereto, may recess for a closed or executive meeting to receive
20 and discuss information received by the commission pursuant to subsec-
21 tion (o) and to negotiate with licensees of or applicants for licensure by
22 the commission regarding any such information.

23 (q) The commission may enter into agreements with the federal bu-
24 reau of investigation, the federal internal revenue service, the Kansas
25 attorney general or any state, federal or local agency as necessary to carry
26 out the duties of the commission under this act.

27 (r) The commission shall adopt such rules and regulations as neces-
28 sary to implement and enforce the provisions of this act.

29 Sec. 31. On and after July 1, 2003, K.S.A. 2000 Supp. 74-8816 is
30 hereby amended to read as follows: 74-8816. (a) The commission shall
31 require occupation licenses for:

32 (1) Any owner of a horse or greyhound participating in a race con-
33 ducted by an organization licensee;

34 (2) any person whose work, in whole or in part, is conducted within
35 a racetrack facility owned or leased by an organization licensee, including
36 trainers, jockeys, agents, apprentices, grooms, exercise persons, veteri-
37 narians, valets, blacksmiths, stewards, racing judges, starters, timers, su-
38 pervisors of mutuels, parimutuel tellers and clerks, guards and such other
39 personnel designated by the commission.

40 (b) An occupation license shall be obtained from the commission
41 prior to the time a person engages in activities for which such license is
42 required, regardless of whether a race meeting is being conducted.

43 (c) A person required to be licensed pursuant to subsection (a) shall

1 apply for such license in a manner and upon forms prescribed and fur-
2 nished by the commission. The commission may require the applicant to
3 submit to fingerprinting. Occupation licenses shall be issued for a period
4 established by the commission but not less than one year or more than
5 three years. The commission shall establish the amount of application
6 fees and license fees for different types of occupation licenses, but no
7 such fee shall exceed \$200 a year. The application fee shall not be re-
8 fundable if the applicant fails to qualify for a license and shall include the
9 cost of processing fingerprints if they are required by the commission.

10 (d) The commission may require an applicant for an occupation li-
11 cense as a condition of licensure to consent to allow agents of the Kansas
12 bureau of investigation or security personnel of the commission to search
13 without warrant the licensee's person, personal property and work prem-
14 ises while within the racetrack facility or adjacent facilities under the
15 control of the organization licensee for the purpose of investigating pos-
16 sible criminal violations of this act or violations of rules and regulations
17 of the commission.

18 (e) Denial of an occupation license by the commission shall be in
19 accordance with the Kansas administrative procedure act. The commis-
20 sion may refuse to issue an occupation license to any person who:

21 (1) Has been convicted of a felony by a court of any state or of the
22 United States or has been adjudicated in the last five years in any such
23 court of committing as a juvenile an act which, if committed by an adult,
24 would constitute a felony;

25 (2) has been convicted of a violation of any law of any state or of the
26 United States involving gambling or controlled substances or has been
27 adjudicated in the last five years in any such court of committing as a
28 juvenile an act which, if committed by an adult, would constitute such a
29 violation;

30 (3) is not qualified to perform the duties associated with the license
31 being applied for;

32 (4) fails to disclose any material fact or provides information, knowing
33 such information to be false, when applying for the license;

34 (5) has been found by the commission to have violated any provision
35 of this act or any rule and regulation of the commission;

36 (6) has had an occupation license suspended, revoked or denied for
37 just cause in any other jurisdiction;

38 (7) has committed two or more acts of violence within the past two
39 years as established by a court of competent jurisdiction of any state or
40 of the United States; or

41 (8) has failed to meet any monetary or tax obligation to the federal
42 government or to any state or local government, whether or not relating
43 to the conduct or operation of a race meet held in this state or any other

1 jurisdiction.

2 (f) The commission may suspend or revoke an occupation license for
3 any reason which would justify refusal to issue such a license and may
4 impose a fine not exceeding \$5,000 for each violation upon any occupation
5 licensee found to have violated any provision of this act or any rule and
6 regulation of the commission. Such fine may be imposed in addition to
7 or in lieu of suspending or revoking such person's occupation license.
8 Proceedings for the suspension or revocation of an occupation license or
9 imposition of a fine pursuant to this subsection shall be conducted by the
10 commission or ~~its appointed hearing officer~~ *a presiding officer from the*
11 *office of administrative hearings* in accordance with the Kansas admin-
12 istrative procedure act, except that, and notwithstanding the provision of
13 K.S.A. 77-512, subsection (b) of K.S.A. 77-526 and subsection (b)(3) of
14 K.S.A. 77-530~~(b)(3)~~, and amendments thereto, any order entered by a
15 ~~hearing officer appointed by the commission~~ *presiding officer* imposing
16 such a fine or suspension shall be a final order and effective when served.

17 (g) The commission may provide by rules and regulations for the
18 temporary suspension of an occupation license by summary adjudicative
19 proceedings in accordance with the Kansas administrative procedure act
20 upon finding that there is probable cause to believe that grounds exist for
21 a permanent suspension or revocation of such license. Such suspension
22 shall be for a period not exceeding 30 days. Upon expiration of such
23 suspension, the license shall be restored unless the license has been sus-
24 pended or revoked pursuant to subsection (f).

25 (h) The stewards at any horse race meeting and the racing judges at
26 any greyhound race meeting may impose on an occupation licensee a civil
27 fine not exceeding \$500 or may suspend any occupation licensee's license
28 for a period not exceeding 15 days upon a finding by at least two of the
29 stewards or racing judges that there is probable cause to believe that the
30 occupation licensee has violated the provisions of this act or any rule or
31 regulation of the commission. No such fine or suspension shall be ordered
32 except after notice and opportunity for hearing in accordance with pro-
33 cedures established by rules and regulations of the commission. Any order
34 imposing such a fine or suspension is effective when rendered. The order
35 shall be subject to appeal to the commission, and may be stayed pending
36 such appeal, as provided by rules and regulations of the commission.
37 Proceedings on appeal shall be in accordance with the provisions of the
38 Kansas administrative procedure act.

39 Sec. 32. On and after July 1, 2003, K.S.A. 2000 Supp. 74-8817 is
40 hereby amended to read as follows: 74-8817. (a) No organization licensee
41 or facility manager licensee shall permit any business not owned and
42 operated by the organization licensee to sell goods or services within a
43 racetrack facility where the organization licensee conducts race meetings

1 unless such business has been issued a concessionaire license by the
2 commission.

3 (b) Businesses required to be licensed pursuant to this section shall
4 apply for concessionaire licenses in a manner and upon forms prescribed
5 and furnished by the commission. The commission shall require disclo-
6 sure of information about the owners and officers of each applicant and
7 may require such owners and officers to submit to fingerprinting. The
8 commission also may require disclosure of information about and finger-
9 printing of such employees of each applicant as the commission considers
10 necessary. Concessionaire licenses shall be issued for a period of time
11 established by the commission but not to exceed 10 years. The commis-
12 sion shall establish a schedule of application fees and license fees for
13 concessionaire licenses based upon the type and size of business. The
14 application fee shall not be refundable if the business fails to qualify for
15 a license. If the application fee is insufficient to pay the reasonable ex-
16 penses of processing the application and investigating the applicant's qual-
17 ifications for licensure, the commission shall require the applicant to pay
18 to the commission, at such times and in such form as required by the
19 commission, any additional amounts necessary to pay such expenses. No
20 license shall be issued to an applicant until the applicant has paid such
21 additional amounts in full, and such amounts shall not be refundable
22 except to the extent that they exceed the actual expenses of processing
23 the application and investigating the applicant's qualifications for
24 licensure.

25 (c) The commission may require applicants as a condition of licensure
26 to consent to allow agents of the Kansas bureau of investigation or security
27 personnel of the commission to search without warrant the licensee's
28 premises and personal property and the persons of its owners, officers
29 and employees while engaged in the licensee's business within the race-
30 track facility or adjacent facilities under the control of the organization
31 licensee for the purpose of investigating criminal violations of this act or
32 violations of rules and regulations of the commission.

33 (d) Denial of a concessionaire license by the commission shall be in
34 accordance with the Kansas administrative procedure act. The commis-
35 sion may refuse to issue a concessionaire license to any business if any
36 person having an ownership interest in such business, any person who is
37 an officer of such business or any person employed by such business
38 within the racetrack facility:

39 (1) Has been convicted of a felony in a court of any state or of the
40 United States or has been adjudicated in the last five years in any such
41 court of committing as a juvenile an act which, if committed by an adult,
42 would constitute a felony;

43 (2) has been convicted of a violation of any law of any state or of the

1 United States involving gambling or controlled substances or has been
2 adjudicated in the last five years in any such court of committing as a
3 juvenile an act which, if committed by an adult, would constitute such a
4 violation;

5 (3) fails to disclose any material fact or provides information, knowing
6 such information to be false, in connection with the application for the
7 license;

8 (4) has been found by the commission to have violated any provision
9 of this act or any rule and regulation of the commission; or

10 (5) has failed to meet any monetary or tax obligation to the federal
11 government or to any state or local government, whether or not relating
12 to the conduct or operation of a race meet held in this state or any other
13 jurisdiction.

14 (e) The commission may suspend or revoke the concessionaire li-
15 cense of any business for any reason which would justify refusal to issue
16 such a license. Proceedings to suspend or revoke such license shall be
17 conducted by the commission or ~~its appointed hearing officer~~ *a presiding*
18 *officer from the office of administrative hearings* in accordance with the
19 provisions of the Kansas administrative procedure act.

20 (f) The commission may provide by rules and regulations for the tem-
21 porary suspension of a concessionaire license by summary adjudicative
22 proceedings in accordance with the Kansas administrative procedure act
23 upon finding that there is probable cause to believe that grounds exist for
24 a permanent suspension or revocation of such license. Such suspension
25 shall be for a period not exceeding 30 days. Upon expiration of such
26 suspension, the license shall be restored unless the license has been sus-
27 pended or revoked as a result of proceedings conducted pursuant to sub-
28 section (e).

29 Sec. 33. On and after July 1, 2003, K.S.A. 2000 Supp. 74-8837 is
30 hereby amended to read as follows: 74-8837. (a) No organization licensee
31 or facility manager licensee shall permit any business not owned and
32 operated by the organization licensee to provide integral racing or wa-
33 gering equipment or services, as designated by the commission, to an
34 organization licensee unless such business has been issued a racing or
35 wagering equipment or services license by the commission. Such equip-
36 ment and services include but are not limited to totalisator, photo finish,
37 video replay and video reception and transmission equipment or services.

38 (b) Businesses required to be licensed pursuant to this section shall
39 apply for racing or wagering equipment or services licenses in a manner
40 and upon forms prescribed and furnished by the commission. The com-
41 mission shall require disclosure of information about the owners and of-
42 ficers of each applicant and may require such owners and officers to
43 submit to fingerprinting. The commission also may require disclosure of

1 information about and fingerprinting of such employees of each applicant
2 as the commission considers necessary. Racing or wagering equipment or
3 services licenses shall be issued for a period of time established by the
4 commission but not to exceed 10 years. The commission shall establish a
5 schedule of application fees and license fees for racing or wagering equip-
6 ment or services licenses based upon the type and size of business. The
7 application fee shall not be refundable if the business fails to qualify for
8 a license. If the application fee is insufficient to pay the reasonable ex-
9 penses of processing the application and investigating the applicant's qual-
10 ifications for licensure, the commission shall require the applicant to pay
11 to the commission, at such times and in such form as required by the
12 commission, any additional amounts necessary to pay such expenses. No
13 license shall be issued to an applicant until the applicant has paid such
14 additional amounts in full, and such amounts shall not be refundable
15 except to the extent that they exceed the actual expenses of processing
16 the application and investigating the applicant's qualifications for
17 licensure.

18 (c) The commission may require applicants as a condition of licensure
19 to consent to allow agents of the Kansas bureau of investigation or security
20 personnel of the commission to search without warrant the licensee's
21 premises and personal property and the persons of its owners, officers
22 and employees while engaged in the licensee's business within the race-
23 track facility or adjacent facilities under the control of the organization
24 licensee for the purpose of investigating criminal violations of this act or
25 violations of rules and regulations of the commission.

26 (d) Denial of a racing or wagering equipment or services license by
27 the commission shall be in accordance with the Kansas administrative
28 procedure act. The commission may refuse to issue a racing or wagering
29 equipment or services license to any business if any person having an
30 ownership interest in such business, any person who is an officer of such
31 business or any person employed by such business within the racetrack
32 facility:

33 (1) Has been convicted of a felony in a court of any state or of the
34 United States or has been adjudicated in the last five years, in any such
35 court of committing as a juvenile an act which, if committed by an adult,
36 would constitute a felony;

37 (2) has been convicted of a violation of any law of any state or of the
38 United States involving gambling or controlled substances or has been
39 adjudicated in the last five years in any such court of committing as a
40 juvenile an act which, if committed by an adult, would constitute such a
41 violation;

42 (3) fails to disclose any material fact or provides information, knowing
43 such information to be false, in connection with the application for the

1 license;

2 (4) has been found by the commission to have violated any provision
3 of this act or any rule and regulation of the commission; or

4 (5) has failed to meet any monetary or tax obligation to the federal
5 government or to any state or local government, whether or not relating
6 to the conduct or operation of a race meet held in this state or any other
7 jurisdiction.

8 (e) The commission may suspend or revoke the racing or wagering
9 equipment or services license of any business for any reason which would
10 justify refusal to issue such a license. Proceedings to suspend or revoke
11 such license shall be conducted by the commission or ~~its appointed hear-~~
12 ~~ing officer~~ *a presiding officer from the office of administrative hearings*
13 in accordance with the provisions of the Kansas administrative procedure
14 act.

15 (f) The commission may provide by rules and regulations for the tem-
16 porary suspension of a racing or wagering equipment or services license
17 by summary adjudicative proceedings in accordance with the Kansas ad-
18 ministrative procedure act upon finding that there is probable cause to
19 believe that grounds exist for a permanent suspension or revocation of
20 such license. Such suspension shall be for a period not exceeding 30 days.
21 Upon expiration of such suspension, the license shall be restored unless
22 the license has been suspended or revoked as a result of proceedings
23 conducted pursuant to subsection (e).

24 (g) This section shall be part of and supplemental to the Kansas par-
25 imutuel racing act.

26 Sec. 34. K.S.A. 2000 Supp. 75-37,121 is hereby amended to read as
27 follows: 75-37,121. ~~On and after July 1, 1998:~~ (a) There is created the
28 office of administrative hearings within the department of administration,
29 to be headed by a director appointed by the secretary of administration.
30 *The director shall be in the unclassified service under the Kansas civil*
31 *service act.*

32 (b) The office ~~shall~~ *may* employ ~~administrative law judges presiding~~
33 ~~officers,~~ court reporters and other support personnel as necessary to con-
34 duct proceedings required by the Kansas administrative procedure act for
35 adjudicative proceedings of the ~~department of social and rehabilitation~~
36 ~~services state agencies, boards and commissions specified in subsection~~
37 ~~(h).~~ The office shall conduct adjudicative proceedings of the ~~department~~
38 ~~of social and rehabilitation services which are not under the Kansas ad-~~
39 ~~ministrative procedure act~~ *any state agency which is specified in subsec-*
40 *tion (h)* when requested by such agency. Only a person admitted to prac-
41 tice law in this state *or a person directly supervised by a person admitted*
42 *to practice law in this state* may be employed as an ~~administrative law~~
43 ~~judge~~ *a presiding officer.* The office may employ regular part-time per-

1 sonnel. Persons employed by the office shall be under the classified civil
2 service.

3 (c) If the office cannot furnish one of its ~~administrative law judges~~
4 ~~presiding officers~~ in response to the ~~department of social and rehabilita-~~
5 ~~tion services~~ a ~~requesting agency's~~ request, the director shall designate in
6 writing a full-time employee of an agency other than the ~~department of~~
7 ~~social and rehabilitation services~~ ~~requesting agency~~ to serve as ~~adminis-~~
8 ~~trative law judge presiding officer~~ for the proceeding, but only with the
9 consent of the employing agency. The designee must possess the same
10 qualifications required of ~~administrative law judges presiding officers~~ em-
11 ployed by the office.

12 (d) The director may furnish ~~administrative law judges presiding of-~~
13 ~~ficers~~ on a contract basis to any governmental entity to conduct any pro-
14 ceeding other than a proceeding as provided in subsection ~~(b)~~ (h).

15 (e) ~~On or before January 1, 1999,~~ The ~~department secretary~~ of ad-
16 ministration ~~shall~~ may adopt rules and regulations:

17 (1) ~~To establish further qualifications for administrative law judges,~~
18 ~~procedures by which candidates will be considered for employment, and~~
19 ~~the manner in which public notice of vacancies in the staff of the office~~
20 ~~will be given;~~

21 ~~—(2)—~~to establish procedures for agencies to request and for the director
22 to assign ~~administrative law judges.~~ The ~~department of social and reha-~~
23 ~~bitation services presiding officers.~~ An agency may neither select nor
24 reject any individual ~~administrative law judge presiding officer~~ for any
25 proceeding except in accordance with the Kansas administrative proce-
26 dure act;

27 ~~(3)~~ (2) to establish procedures and adopt forms, consistent with the
28 Kansas administrative procedure act, the model rules of procedure, and
29 other provisions of law, to govern ~~administrative law judges; presiding~~
30 ~~officers; and~~

31 ~~(4)—~~to establish standards and procedures for the evaluation, training,
32 ~~promotion and discipline of administrative law judges; and~~

33 ~~—(5)~~ (3) to facilitate the performance of the responsibilities conferred
34 upon the office by the Kansas administrative procedure act.

35 (f) The director may:

36 ~~—(1)—~~Maintain a staff of reporters and other personnel; and

37 ~~—(2)—~~implement the provisions of this section and rules and regulations
38 adopted under its authority.

39 (g) The ~~department secretary~~ of administration may adopt rules and
40 regulations to establish fees to charge a state agency for the cost of using
41 ~~an administrative law judge a presiding officer.~~

42 (h) *The following state agencies, boards and commissions shall utilize*
43 *the office of administrative hearings for adjudicative proceedings in which*

1 *the presiding officer is not the agency head or one or more members of*
2 *the agency head:*

3 *(1) On and after July 1, 2001: Department of social and rehabilitation*
4 *services, juvenile justice authority, department on aging, state board of*
5 *pharmacy, board of nursing, Kansas board of examiners in fitting and*
6 *dispensing of hearing aids, board of examiners in optometry, emergency*
7 *medical services board, Kansas dental board, emergency medical services*
8 *council and Kansas human rights commission.*

9 *(2) On and after July 1, 2002: Kansas department of wildlife and*
10 *parks, department of revenue, state board of veterinary examiners, be-*
11 *havioral sciences regulatory board, Kansas real estate commission, real*
12 *estate appraisal board, state board of mortuary arts, state board of cos-*
13 *metology, Kansas board of barbering, state board of technical professions*
14 *and state board of tax appeals.*

15 *(3) On and after July 1, 2003: Department of health and environment,*
16 *state board of healing arts, Kansas lottery, Kansas racing commission,*
17 *Kansas state banking board, consumer credit commissioner, state depart-*
18 *ment of credit unions, office of the securities commissioner of Kansas,*
19 *Kansas public employees retirement system, board of adult care home*
20 *administrators, state treasurer, board of accountancy and pooled money*
21 *investment board.*

22 *(4) On and after July 1, 2004: Department of agriculture, department*
23 *of human resources, state corporation commission, state conservation*
24 *commission, Kansas water office, agricultural labor relations board, Kan-*
25 *sas animal health department and citizens' utility rate payor board.*

26 *(i) Effective July 1, 1998, personnel in the administrative hearings*
27 *section of the department of social and rehabilitation services and support*
28 *personnel for such administrative law judges, shall be transferred to the*
29 *office of administrative hearings. Such personnel shall retain all rights*
30 *under the state personnel system and retirement benefits under the laws*
31 *of this state, and such person's services shall be deemed to have been*
32 *continuous. This act shall not affect any matter pending before an ad-*
33 *ministrative hearing officer at the time of the effective date of the transfer,*
34 *and such matter shall proceed as though no transfer of employment had*
35 *occurred.*

36 *(j) (1) Effective July 1, 2001, any presiding officer in the administra-*
37 *tive hearings section of all agencies specified in subsection (h)(1) which*
38 *conduct hearings pursuant to the Kansas administrative procedure act,*
39 *except those exempted pursuant to K.S.A. 75-551 and amendments*
40 *thereto, and support personnel for such presiding officers, shall be trans-*
41 *ferred to and shall become employees of the office of administrative hear-*
42 *ings. Such personnel shall retain all rights under the state personnel sys-*
43 *tem and retirement benefits under the laws of this state which had accrued*

1 *to or vested in such personnel prior to the effective date of this section.*
2 *Such person's services shall be deemed to have been continuous. All trans-*
3 *fers of personnel positions in the classified service under the Kansas civil*
4 *service act shall be in accordance with civil service laws and any rules*
5 *and regulations adopted thereunder. This section shall not affect any mat-*
6 *ter pending before an administrative hearing officer at the time of the*
7 *effective date of the transfer, and such matter shall proceed as though no*
8 *transfer of employment had occurred.*

9 (2) *Effective July 1, 2002, any presiding officer in the administrative*
10 *hearings section of all agencies specified in subsection (h)(2) which con-*
11 *duct hearings pursuant to the Kansas administrative procedure act, except*
12 *those exempted pursuant to K.S.A. 75-551 and amendments thereto, and*
13 *support personnel for such presiding officers, shall be transferred to and*
14 *shall become employees of the office of administrative hearings. Such per-*
15 *sonnel shall retain all rights under the state personnel system and retire-*
16 *ment benefits under the laws of this state which had accrued to or vested*
17 *in such personnel prior to the effective date of this section. Such person's*
18 *services shall be deemed to have been continuous. All transfers of person-*
19 *nel positions in the classified service under the Kansas civil service act*
20 *shall be in accordance with civil service laws and any rules and regula-*
21 *tions adopted thereunder. This section shall not affect any matter pending*
22 *before an administrative hearing officer at the time of the effective date*
23 *of the transfer, and such matter shall proceed as though no transfer of*
24 *employment had occurred.*

25 (3) *Effective July 1, 2003, any presiding officer in the administrative*
26 *hearings section of all agencies specified in subsection (h)(3) which con-*
27 *duct hearings pursuant to the Kansas administrative procedure act, except*
28 *those exempted pursuant to K.S.A. 75-551 and amendments thereto, and*
29 *support personnel for such presiding officers, shall be transferred to and*
30 *shall become employees of the office of administrative hearings. Such per-*
31 *sonnel shall retain all rights under the state personnel system and retire-*
32 *ment benefits under the laws of this state which had accrued to or vested*
33 *in such personnel prior to the effective date of this section. Such person's*
34 *services shall be deemed to have been continuous. All transfers of person-*
35 *nel positions in the classified service under the Kansas civil service act*
36 *shall be in accordance with civil service laws and any rules and regula-*
37 *tions adopted thereunder. This section shall not affect any matter pending*
38 *before an administrative hearing officer at the time of the effective date*
39 *of the transfer, and such matter shall proceed as though no transfer of*
40 *employment had occurred.*

41 (4) *Effective July 1, 2004, any presiding officer in the administrative*
42 *hearings section of all agencies specified in subsection (h)(4) which con-*
43 *duct hearings pursuant to the Kansas administrative procedure act, except*

1 *those exempted pursuant to K.S.A. 75-551 and amendments thereto, and*
2 *support personnel for such presiding officers, shall be transferred to and*
3 *shall become employees of the office of administrative hearings. Such per-*
4 *sonnel shall retain all rights under the state personnel system and retire-*
5 *ment benefits under the laws of this state which had accrued to or vested*
6 *in such personnel prior to the effective date of this section. Such person's*
7 *services shall be deemed to have been continuous. All transfers of person-*
8 *nel positions in the classified service under the Kansas civil service act*
9 *shall be in accordance with civil service laws and any rules and regula-*
10 *tions adopted thereunder. This section shall not affect any matter pending*
11 *before an administrative hearing officer at the time of the effective date*
12 *of the transfer, and such matter shall proceed as though no transfer of*
13 *employment had occurred.*

14 Sec. 35. On and after July 1, 2005, K.S.A. 75-37,122 is hereby
15 amended to read as follows: 75-37,122. ~~On and after July 1, 1998:~~ (a)
16 There is hereby created a state advisory council for administrative hear-
17 ings. The advisory council shall consist of seven members appointed by
18 the governor. All members of the council shall serve at the pleasure of
19 the governor. Members of the council shall not receive compensation or
20 expense allowances for serving on the council.

21 (b) The council shall meet on call of the ~~secretary of administration~~
22 *director of the office of administrative hearings.*

23 (c) The advisory council shall advise the ~~secretary of administration~~
24 ~~and the~~ director of the office of administrative hearings on policy matters
25 affecting the office of administrative hearings and on rules and regulations
26 adopted by the director.

27 Sec. 36. On and after July 1, 2001, K.S.A. 75-6207 is hereby
28 amended to read as follows: 75-6207. (a) If the director receives a timely
29 written request for a hearing under K.S.A. 75-6206 and amendments
30 thereto, the director shall request ~~the secretary of administration to ap-~~
31 ~~point~~ a presiding officer *from the office of administrative hearings* who
32 shall hold a hearing in accordance with the provisions of the Kansas ad-
33 ministrative procedure act to determine whether the debt claim is valid.
34 Subject to the provisions of subsection (b), the presiding officer shall
35 determine whether the claimed sum asserted as due and owing is correct,
36 and if not, shall order an adjustment to the debt claim which shall be
37 forwarded to the director and to the state agency, foreign state agency or
38 municipality to which the debt is owed. No issue may be considered at
39 the hearing which has been previously litigated and no collateral attack
40 on any judgment shall be permitted at the hearing. The order of the
41 presiding officer shall inform the debtor of the amount determined as
42 due, if any, and that setoff procedures have been ordered to proceed in
43 accordance with this act. If the setoff is to be made against earnings of

1 the debtor, the order shall include a statement that the setoff may be
2 postponed in accordance with K.S.A. 75-6208 and amendments thereto.
3 Orders under this section shall not be subject to administrative review.

4 (b) In cases where there is only one known present or future payment
5 due from the state to the alleged debtor, the presiding officer may limit
6 the hearing issue to a determination of whether the debt owed the state
7 agency, foreign state agency or municipality is at least equal to the amount
8 of the payment owed to the debtor by the state.

9 (c) Pending final determination in the order of the presiding officer
10 of the validity of the debt asserted by the state agency, foreign state
11 agency or municipality, no action shall be taken in furtherance of collec-
12 tion through the setoff procedure allowed under this act.

13 (d) Judicial review of an order under this section shall be in accord-
14 ance with the provisions of the act for judicial review and civil enforce-
15 ment of agency actions. In any such review, except as provided in sub-
16 section (e), the department of administration and the secretary of
17 administration shall not be named parties to the proceedings.

18 (e) Parties to an action for review of an order under this section shall
19 be: (1) The debtor; (2) the state agency, foreign state agency or munici-
20 pality which requested assistance in collecting the debt or which certified
21 the debt; and (3) any party the district court permits to intervene in the
22 action. Applications for a stay or other temporary remedies shall be to
23 the district court.

24 Sec. 37. On and after July 1, 2001, K.S.A. 76-3110 is hereby
25 amended to read as follows: 76-3110. (a) The KPR board may initiate a
26 proceeding to effect termination of a postsecondary institution's partici-
27 pation in federal student aid programs by serving written notice upon the
28 institution that the board has determined that the institution should not
29 be eligible for participation in such programs. The notice shall include a
30 statement of the reasons for the determination and a statement that the
31 institution may contest the finding before a ~~hearing~~ *presiding* officer upon
32 written request filed with the KPR board. The request to be heard must
33 be filed within 15 days from the date of the notice of the board's deter-
34 mination. Upon receipt of a request by an institution to be heard, the
35 KPR board shall notify the secretary of human resources that the ap-
36 pointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after
37 receipt of notification from the KPR board, the secretary of human re-
38 sources shall ~~appoint~~ *request* a ~~hearing~~ *presiding* officer ~~from a list, which~~
39 ~~shall be compiled and maintained by the secretary of human resources,~~
40 ~~of impartial persons who are representative of the public and who are~~
41 ~~qualified to serve as hearing officers.~~

42 (b) Any hearing requested by a postsecondary institution as provided
43 in subsection (a) shall be commenced within 15 calendar days after the

1 ~~hearing~~ *presiding* officer is ~~appointed~~ *requested* and shall be conducted
2 in accordance with the provisions of the Kansas administrative procedure
3 act. Within 30 days after close of the hearing, the ~~hearing~~ *presiding* officer
4 shall render a written opinion setting forth the ~~hearing~~ *presiding* officer's
5 findings of fact and recommendation as to the determination of the mat-
6 ter. The opinion shall be submitted to the KPR board and to the postse-
7 condary institution. If, after receipt of the ~~hearing~~ *presiding* officer's opin-
8 ion, the KPR board concludes that the board's determination that the
9 institution should not be eligible for participation in federal student aid
10 programs was warranted, the board shall notify the institution and the
11 secretary of education of the determination and the reasons therefor.

12 Sec. 38. On and after July 1, 2001, K.S.A. 77-505 is hereby amended
13 to read as follows: 77-505. Nothing in ~~this the Kansas administrative pro-~~
14 ~~cedure act shall preclude informal settlement of matters that may make~~
15 ~~unnecessary more elaborate proceedings under this act parties from set-~~
16 ~~tling a matter at any time. In addition, nothing in the Kansas adminis-~~
17 ~~trative procedure act shall preclude use of alternative dispute resolution,~~
18 ~~with consent of the agency and all parties.~~

19 Sec. 39. On and after July 1, 2001, K.S.A. 2000 Supp. 77-514 is
20 hereby amended to read as follows: 77-514. (a) *For agencies listed in*
21 *subsection (h) of K.S.A. 75-37,121, and amendments thereto,* the agency
22 head, one or more members of the agency head, ~~an administrative law~~
23 ~~judge or a presiding officer~~ assigned by the office of administrative hear-
24 ings, ~~or, unless prohibited by K.S.A. 77-551, and amendments thereto,~~
25 ~~one or more other persons designated by the agency head may shall~~ be
26 the presiding officer. *For all other agencies, the agency head, one or more*
27 *members of the agency head, a presiding officer assigned by the office of*
28 *administrative hearings, or, unless prohibited by K.S.A. 77-551, and*
29 *amendments thereto, one or more other persons designated by the agency*
30 *head shall be the presiding officer.*

31 (b) Any person serving or designated to serve alone or with others as
32 presiding officer is subject to disqualification for administrative bias, prej-
33 udice or interest.

34 (c) Any party may petition for the disqualification of a person
35 promptly after receipt of notice indicating that the person will preside or
36 promptly upon discovering facts establishing grounds for disqualification,
37 whichever is later.

38 (d) A person whose disqualification is requested shall determine
39 whether to grant the petition, stating facts and reasons for the
40 determination.

41 (e) If a substitute is required for a person who is disqualified or be-
42 comes unavailable for any other reason, any action taken by a duly ap-
43 pointed substitute for a disqualified or unavailable person is as effective

1 as if taken by the latter.

2 (f) If the office of administrative hearings cannot provide a presiding
3 officer, a state agency may enter into agreements with another state
4 agency to provide presiding officers to conduct proceedings under this
5 act.

6 (g) Notwithstanding any quorum requirements, if the agency head of
7 a professional or occupational licensing agency is a body of individuals,
8 the agency head, unless prohibited by law, may designate one or more
9 members of the agency head to serve as presiding officer and to render
10 a final order in the proceeding.

11 Sec. 40. On and after July 1, 2005, K.S.A. 2000 Supp. 77-514, as
12 amended by section 39 of this act, is hereby amended to read as follows:
13 77-514. (a) ~~For agencies listed in subsection (b) of K.S.A. 75-37,121, and~~
14 ~~amendments thereto, The agency head, one or more members of the~~
15 ~~agency head or a presiding officer assigned by the office of administrative~~
16 ~~hearings shall be the presiding officer. For all other agencies, the agency~~
17 ~~head, one or more members of the agency head, a presiding officer as-~~
18 ~~signed by the office of administrative hearings, or, unless prohibited by~~
19 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~
20 ~~ignated by the agency head shall be the presiding officer.~~

21 (b) Any person serving or designated to serve alone or with others as
22 presiding officer is subject to disqualification for administrative bias, prej-
23 udice or interest.

24 (c) Any party may petition for the disqualification of a person
25 promptly after receipt of notice indicating that the person will preside or
26 promptly upon discovering facts establishing grounds for disqualification,
27 whichever is later.

28 (d) A person whose disqualification is requested shall determine
29 whether to grant the petition, stating facts and reasons for the
30 determination.

31 (e) If a substitute is required for a person who is disqualified or be-
32 comes unavailable for any other reason, any action taken by a duly ap-
33 pointed substitute for a disqualified or unavailable person is as effective
34 as if taken by the latter.

35 (f) If the office of administrative hearings cannot provide a presiding
36 officer, a state agency may enter into agreements with another state
37 agency to provide presiding officers to conduct proceedings under this
38 act.

39 (g) Notwithstanding any quorum requirements, if the agency head of
40 a professional or occupational licensing agency is a body of individuals,
41 the agency head, unless prohibited by law, may designate one or more
42 members of the agency head to serve as presiding officer and to render
43 a final order in the proceeding.

1 Sec. 41. On and after July 1, 2002, K.S.A. 77-549 is hereby amended
2 to read as follows: 77-549. (a) The filing of a return with the director of
3 taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of
4 the Kansas Statutes Annotated, and amendments thereto, shall not be
5 deemed an application for an order under the Kansas administrative pro-
6 cedure act.

7 (b) A determination by the division of taxation or the audit services
8 bureau of the department of revenue concerning tax liability under article
9 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes
10 Annotated, and amendments thereto, which is made prior to the oppor-
11 tunity for a hearing or prior to the opportunity for an informal conference
12 before the secretary or the secretary's designee on such tax liability, shall
13 not require an adjudicative proceeding under the Kansas administrative
14 procedure act.

15 (c) For purposes of the Kansas administrative procedure act, the sec-
16 retary of revenue may designate the director of the division of taxation
17 or ~~other designee~~ *a presiding officer from the office of administrative*
18 *hearings* as agency head.

19 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,
20 and amendments thereto, shall be rendered in writing and served within
21 120 days after conclusion of the hearing or after submission of proposed
22 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-
23 ments thereto, unless this period is waived or extended with the written
24 consent of all parties or for good cause shown. If extended for good cause,
25 such good cause shall be set forth in writing on or before the expiration
26 of the 120 days.

27 Sec. 42. On and after July 1, 2002, K.S.A. 77-550 is hereby amended
28 to read as follows: 77-550. For purposes of administrative proceedings of
29 the division of property valuation under the Kansas administrative pro-
30 cedure act, the secretary of revenue may designate the director of the
31 division of property valuation or ~~other designee~~ *a presiding officer from*
32 *the office of administrative hearings* as agency head.

33 Sec. 43. On and after July 1, 2001, K.S.A. 77-551, is hereby amended
34 to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) *Except as pro-*
35 *vided in subsection (b), in all hearings of the department of social and*
36 *rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,*
37 *75-3306 and 75-3340, and amendments thereto, any state agency speci-*
38 *fied in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that*
39 *are required to be conducted in accordance with the provisions of the*
40 *Kansas administrative procedure act, the presiding officer shall be the*
41 *agency head, one or more members of the agency head or an adminis-*
42 *trative law judge a presiding officer assigned by the office of administra-*
43 *tive hearings.*

1 (b) *The provisions of this section shall not apply to the employment*
2 *security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto*
3 *or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532*
4 *and 44-5,120 and amendments thereto, concerning the workers compen-*
5 *sation act.*

6 (c) This section shall be part of and supplemental to the Kansas ad-
7 ministrative procedure act.

8 Sec. 44. On and after July 1, 2005, K.S.A. 77-551, as amended by
9 section 43 of this act, is hereby amended to read as follows: 77-551. (a)
10 Except as provided in subsection (b), in all hearings of any state agency
11 ~~specified in subsection (b) of K.S.A. 75-37,121, and amendments thereto,~~
12 that are required to be conducted in accordance with the provisions of
13 the Kansas administrative procedure act, the presiding officer shall be the
14 agency head, one or more members of the agency head or a presiding
15 officer assigned by the office of administrative hearings.

16 (b) The provisions of this section shall not apply to the employment
17 security law, pursuant to K.S.A. 44-701 *et seq.*, and amendments thereto
18 or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532
19 and 44-5,120 and amendments thereto, concerning the workers compen-
20 sation act.

21 (c) This section shall be part of and supplemental to the Kansas ad-
22 ministrative procedure act.

23 Sec. 45. On and after July 1, 2002, K.S.A. 79-3313 is hereby
24 amended to read as follows: 79-3313. All cigarettes sold in this state shall
25 be in packages, and each of the packages shall bear evidence of payment
26 of the tax thereon except that any railroad or sleeping car company li-
27 censed as a retailer is hereby authorized to sell cigarettes upon its cars
28 without affixing stamps to the packages of cigarettes provided that
29 monthly reports and payment of the tax due is made directly to the di-
30 rector in the manner and under the terms provided for by the director.
31 In addition, manufacturers are hereby authorized to distribute in the
32 state, through their authorized representatives or wholesale dealers, free
33 sample packages of cigarettes containing less than 20 cigarettes without
34 affixing stamps to the packages provided that monthly reports and pay-
35 ment of a tax at the rates prescribed by law are made directly to the
36 director. No wholesale dealer or manufacturers' authorized representa-
37 tives shall sell or distribute cigarettes, except free sample packages, to
38 any person in the state of Kansas not holding a dealer's license as provided
39 in this act. Such packages of sample cigarettes shall bear the word "sam-
40 ple" or "not for sale" and "state tax paid" in letters easily read.

41 Whenever the director shall have reason to believe that any manufac-
42 turer has violated the provisions of this section or the conditions provided
43 by the director, the director shall conduct a hearing thereon in accordance

1 with the provisions of the Kansas administrative procedure act ~~in the~~
2 ~~office of the director at Topeka.~~ If upon the basis of such hearing it
3 appears to the satisfaction of the director that such manufacturer has
4 violated any of the provisions of this section or the conditions provided
5 by the director, the director is hereby authorized to suspend or revoke
6 the authorization to the manufacturer for such period as the director
7 determines is necessary but in no case for more than one year.

8 Sec. 46. On and after July 1, 2004, K.S.A. 82a-1405 is hereby
9 amended to read as follows: 82a-1405. (a) At the direction of the authority,
10 the director may issue licenses for weather modification activities, as pro-
11 vided for in this act, but any licensee shall be limited in the exercise of
12 activities under the license to the specified method or methods of weather
13 modification activity within the area of expertise of the licensee.

14 (b) At the direction of the authority, the director may issue a permit
15 for each specific weather modification project or program, which may be
16 comprised of one or more weather modification activities. Every such
17 permit shall describe:

18 (1) The geographic area within which such activities are to be carried
19 out;

20 (2) the geographic area to be affected; and

21 (3) the duration of the weather modification activities of the project
22 or program, which period may be noncontinuous but which may not have
23 a total duration exceeding one calendar year from the day of its issuance.

24 The director shall issue a permit only after it has been established that
25 the project or program, as conceived, will provide substantial benefits or
26 that it will advance scientific knowledge.

27 (c) The director shall make any studies or investigations, obtain any
28 information and hold any hearings that the director considers necessary
29 or proper to assist in exercising the powers or administering or enforcing
30 the provisions of this act.

31 ~~The director may appoint a hearing officer to conduct any hearings~~
32 ~~required by this act.~~ The hearings shall be conducted under the provisions
33 and within any limitations of rules and regulations adopted by the
34 authority.

35 (d) In order to assist in expanding the theoretical and practical knowl-
36 edge of weather modification, the authority, to the extent that funds are
37 available therefor, may cooperate with, support, participate in and pro-
38 mote research, development and operational programs in:

39 (1) The theory and development of weather modification, including
40 those aspects relating to procedures, materials, ecological effects and the
41 attendant legal and social problems;

42 (2) the utilization of weather modification for domestic, municipal,
43 agricultural, industrial, recreational and other beneficial purposes; and

1 (3) the protection of life, health, property and the general
2 environment.

3 (e) Subject to any limitations imposed by law, to further the purposes
4 of this act, the authority may utilize available funds from the state and
5 may accept federal grants, private gifts and donations from any source.
6 Except as otherwise provided by law, the authority may use any such
7 moneys:

8 (1) For the administration of this act;

9 (2) to encourage research and development projects by public or pri-
10 vate agencies through grants, contracts or cooperative arrangements;

11 (3) to contract for and support local efforts in weather modification
12 activities to seek relief from or to avoid droughts, hail, storms, fires, fog
13 or other naturally undesirable conditions.

14 (f) Under the direction of the authority, the director shall represent
15 the state in matters pertaining to plans, procedures, or negotiations for
16 cooperative agreements, or intergovernmental arrangements relating to
17 weather modification.

18 Sec. 47. On and after July 1, 2004, K.S.A. 82a-1501a is hereby
19 amended to read as follows: 82a-1501a. (a) The water transfer hearing
20 panel shall consist of the chief engineer, the director and the secretary.
21 The chief engineer shall serve as chairperson of the panel. All actions of
22 the panel shall be taken by a majority of the members. The panel shall
23 have all powers necessary to implement the provisions of this act.

24 (b) The panel shall ~~select a hearing officer~~ *request a presiding officer*
25 *from the office of administrative hearings* to conduct a hearing in accord-
26 ance with this act when: (1) An application for a water transfer is com-
27 plete; or (2) the chief engineer, or the panel by a majority vote which
28 includes the vote of the chief engineer, determines it to be in the best
29 interest of the state to conduct a water transfer hearing on an application
30 for a permit to appropriate water or an application for a change to an
31 existing water right pursuant to the Kansas water appropriation act or on
32 a proposed contract for the sale of water from the state's conservation
33 storage water supply capacity, even though the appropriation or sale
34 would not be a water transfer as defined by K.S.A. 82a-1501 and amend-
35 ments thereto.

36 ~~(c) The hearing officer shall be an independent person knowledg-
37 eable in water law, water issues and hearing procedures. The hearing officer
38 shall be a presiding officer for the purposes of the Kansas administrative
39 procedure act. Subject to approval by the panel, the hearing officer, on
40 behalf of the state, may employ such personnel and contract for such
41 services and facilities as necessary to carry out the hearing officer's duties
42 under this act.~~

43 Sec. 48. On and after July 1, 2004, K.S.A. 82a-1502 is hereby

1 amended to read as follows: 82a-1502. (a) No person shall make a water
2 transfer in this state unless and until the transfer is approved pursuant to
3 the provisions of this act. No water transfer shall be approved which
4 would reduce the amount of water required to meet the present or any
5 reasonably foreseeable future beneficial use of water by present or future
6 users in the area from which the water is to be taken for transfer unless:
7 (1) The panel determines that the benefits to the state for approving the
8 transfer outweigh the benefits to the state for not approving the transfer;
9 (2) the chief engineer recommends to the panel and the panel concurs
10 that an emergency exists which affects the public health, safety or welfare;
11 or (3) the governor has declared that an emergency exists which affects
12 the public health, safety or welfare. Whenever an emergency exists, a
13 water transfer may be approved by the panel on a temporary basis for a
14 period of time not to exceed one year under rules and regulations adopted
15 by the chief engineer. The emergency approval shall be subject to the
16 terms, conditions and limitations specified by the panel.

17 (b) No water transfer shall be approved under the provisions of this
18 act: (1) If such transfer would impair water reservation rights, vested
19 rights, appropriation rights or prior applications for permits to appropriate
20 water; and (2) unless the ~~hearing~~ *presiding* officer determines that the
21 applicant has adopted and implemented conservation plans and practices
22 that (A) are consistent with the guidelines developed and maintained by
23 the Kansas water office pursuant to K.S.A. 74-2608 and amendments
24 thereto, (B) have been in effect for not less than 12 consecutive months
25 immediately prior to the filing of the application on which the hearing is
26 being held and (C) if the transfer is for use by a public water supply
27 system, include the implementation of a rate structure which encourages
28 the efficient use of water that is determined by the ~~hearing~~ *presiding*
29 officer to be effective and if designed, implemented and maintained prop-
30 erly, will result in wise use and responsible conservation and management
31 of water used by the system.

32 (c) To determine whether the benefits to the state for approving the
33 transfer outweigh the benefits to the state for not approving the transfer,
34 the ~~hearing~~ *presiding* officer shall consider all matters pertaining thereto,
35 including specifically:

- 36 (1) Any current beneficial use being made of the water proposed to
37 be diverted, including minimum desirable streamflow requirements;
38 (2) any reasonably foreseeable future beneficial use of the water;
39 (3) the economic, environmental, public health and welfare and other
40 impacts of approving or denying the transfer of the water;
41 (4) alternative sources of water available to the applicant and present
42 or future users for any beneficial use;
43 (5) whether the applicant has taken all appropriate measures to pre-

1 serve the quality and remediate any contamination of water currently
2 available for use by the applicant;

3 (6) the proposed plan of design, construction and operation of any
4 works or facilities used in conjunction with carrying the water from the
5 point of diversion, which plan shall be in sufficient detail to enable all
6 parties to understand the impacts of the proposed water transfer;

7 (7) the effectiveness of conservation plans and practices adopted and
8 implemented by the applicant and any other entities to be supplied water
9 by the applicant;

10 (8) the conservation plans and practices adopted and implemented
11 by any persons protesting or potentially affected by the proposed transfer,
12 which plans and practices shall be consistent with the guidelines for con-
13 servation plans and practices developed and maintained by the Kansas
14 water office pursuant to K.S.A. 74-2608 and amendments thereto; and

15 (9) any applicable management program, standards, policies and
16 rules and regulations of a groundwater management district.

17 Sec. 49. On and after July 1, 2004, K.S.A. 82a-1503 is hereby
18 amended to read as follows: 82a-1503. (a) Any person desiring to make a
19 water transfer shall file with the chief engineer an application in the form
20 required by rules and regulations adopted by the chief engineer. If the
21 chief engineer finds the application to be insufficient to enable the chief
22 engineer to determine the source, nature and amount of the proposed
23 transfer, or if the application is not complete, the application shall be
24 returned for correction or completion or for any other necessary
25 information.

26 (b) The ~~hearing~~ *presiding* officer shall commence the hearing process
27 by giving notice of the prehearing conference not more than 14 days after
28 the panel ~~employs the hearing~~ *is assigned a presiding* officer. Such notice
29 shall be given by mail to the applicant, any other parties who have inter-
30 vened and the appropriate commenting agencies and shall be published
31 in the Kansas register and in at least two newspapers having general cir-
32 culation in the area where the proposed point of diversion is located. The
33 ~~hearing~~ *presiding* officer shall hold a prehearing conference which shall
34 commence not less than 90 and not more than 120 days after the required
35 notice has been given and shall conclude not later than 45 days after
36 commencement. Not less than 90 and not more than 120 days after the
37 conclusion of the prehearing conference, the ~~hearing~~ *presiding* officer
38 shall commence a formal public hearing. The formal public hearing shall
39 be held in the basin of origin and, if deemed necessary by the ~~hearing~~
40 *presiding* officer, a public comment hearing shall be held in the basin of
41 use. The formal public hearing shall conclude not later than 120 days
42 after commencement and the initial order of the ~~hearing~~ *presiding* officer
43 approving or disapproving the water transfer shall be issued not later than

1 90 days after conclusion of the formal public hearing. The ~~hearing pre-~~
2 ~~siding~~ officer may extend a time limit provided by this subsection, but
3 only with the written consent of all parties or for good cause shown.

4 (c) Intervention in the hearing shall be in accordance with the Kansas
5 administrative procedure act, except that any petition for intervention
6 must be submitted and copies mailed to all parties not later than 60 days
7 before the formal hearing.

8 (d) Any person shall be permitted to appear and testify at any hearing
9 under this act upon the terms and conditions determined by the ~~hearing~~
10 ~~presiding~~ officer.

11 (e) At intervals during or at the conclusion of the hearing, the ~~hearing~~
12 ~~presiding~~ officer shall fairly and equitably assess the following costs of the
13 hearing among the applicant and other parties: The hearing facility, the
14 court reporter, the salary of a ~~hearing presiding~~ officer who is not paid
15 for services as a ~~hearing presiding~~ officer by state funds, the travel ex-
16 penses of the ~~hearing presiding~~ officer and other reasonable costs asso-
17 ciated with the hearing. The ~~hearing presiding~~ officer may assess any or
18 all anticipated costs to the applicant before the hearing and subsequently
19 may assess other parties for the parties' fair and equitable portion of the
20 anticipated costs assessed the applicant. Amounts assessed pursuant to
21 this subsection shall be paid to the chief engineer. Upon receipt thereof,
22 the chief engineer shall remit the entire amount to the state treasurer.
23 The state treasurer shall deposit the entire amount in the state treasury
24 and credit it to the water transfer hearing fund established by subsection
25 (f).

26 (f) (1) There is hereby established in the state treasury the water
27 transfer hearing fund.

28 (2) Moneys credited to the water transfer hearing fund shall be used
29 only to pay: (A) Costs of hearings conducted pursuant to the water trans-
30 fer act; (B) reimbursement of the applicant for anticipated costs assessed
31 the applicant and subsequently assessed other parties; and (C) refunds of
32 unused moneys assessed as anticipated costs before the hearing. Expend-
33 itures from such fund shall be made in accordance with appropriation
34 acts upon warrants of the director of accounts and reports, or a person
35 designated by the director of accounts and reports pursuant to K.S.A. 75-
36 3732 and amendments thereto, issued pursuant to vouchers approved by
37 the chief engineer, or a person designated by the chief engineer.

38 (3) On or before the 10th of each month, the director of accounts
39 and reports shall transfer from the state general fund to the water transfer
40 hearing fund interest earnings based on:

41 (A) The average daily balance of moneys in the water transfer hearing
42 fund for the preceding month; and

43 (B) the net earnings rate for the pooled money investment portfolio

1 for the preceding month.

2 Sec. 50. On and after July 1, 2004, K.S.A. 82a-1504 is hereby
3 amended to read as follows: 82a-1504. (a) The ~~hearing~~ *presiding* officer
4 shall render an order either approving or disapproving the proposed water
5 transfer. The ~~hearing~~ *presiding* officer's order shall include findings of
6 fact relating to each of the factors set forth in subsection (c) of K.S.A.
7 82a-1502 and amendments thereto. The ~~hearing~~ *presiding* officer may
8 order approval of a transfer of a smaller amount of water than requested
9 upon such terms, conditions and limitations as the ~~hearing~~ *presiding* of-
10 ficer deems necessary for the protection of the public interest of the state
11 as a whole.

12 (b) An order of the ~~hearing~~ *presiding* officer disapproving or approv-
13 ing a water transfer, in whole or in part, shall be deemed an initial order.
14 The panel shall be deemed the agency head for the purpose of the Kansas
15 administrative procedure act and shall review all initial orders of the ~~hear-~~
16 ~~ing~~ *presiding* officer in accordance with the Kansas administrative pro-
17 cedure act. Review by the panel shall be in accordance with the standards
18 provided by this act for the ~~hearing~~ *presiding* officer's initial order and
19 shall be based on the record of the hearing. The final order of the panel
20 shall be entered not later than 90 days after entry of the ~~hearing~~ *presiding*
21 officer's initial order, except that the panel may extend the 90-day limit,
22 but only with the written consent of all parties or for good cause shown.

23 (c) Any proceedings pursuant to this act and notice of such proceed-
24 ings shall be in accordance with the provisions of the Kansas administra-
25 tive procedure act except as specifically provided by this act.

26 (d) The record of any hearing or other proceeding held pursuant to
27 this act shall be maintained and make available for public examination in
28 the office of the chief engineer.

29 Sec. 51. On and after July 1, 2001, K.S.A. 21-3110, 44-1005, 75-
30 5611a, 75-6207, 76-3110, 77-505 and 77-551 and K.S.A. 2000 Supp. 75-
31 37,121 and 77-514 are hereby repealed.

32 Sec. 52. On and after July 1, 2002, K.S.A. 8-2426, 77-549, 77-550
33 and 79-3313 are hereby repealed.

34 Sec. 53. On and after July 1, 2003, K.S.A. 36-509, 65-163a, 65-673,
35 65-2305, 65-3483, 65-3488 and 65-3490 and K.S.A. 2000 Supp. 65-163,
36 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and 74-8837 are
37 hereby repealed.

38 Sec. 54. On and after July 1, 2004, K.S.A. 2-1208a, 2-3311, 44-322a,
39 49-606, 65-720a, 65-747, 65-753, 82a-1405, 82a-1501a, 82a-1502, 82a-
40 1503 and 82a-1504 and K.S.A. 2000 Supp. 66-1,117 are hereby repealed.

41 Sec. 55. On and after July 1, 2005, K.S.A. 31-140, 40-2,137, 75-
42 37,122 and K.S.A. 77-551, as amended by section 43 of this act, and K.S.A.
43 2000 Supp. 77-514, as amended by section 39 of this act, are hereby

1 repealed.

2 Sec. 56. This act shall take effect and be in force from and after its
3 publication in the statute book.

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