

Substitute for HOUSE BILL No. 2488

By Committee on Judiciary

3-1

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, 65-2305,
65-3483, 65-3488, 65-3490, 75-37,122, 75-6207, 76-3110, 77-505, 77-
549, 77-550, 77-551, 77-551, as amended by section 40 of this act, 79-
3313 and 82a-1405, and K.S.A. 2001 Supp. 65-163, 65-525, 65-526,
66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-37,121, 77-
514 and 77-514 as amended by section 36 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, 2006: (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
administrative hearings within the department of administration and the

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

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

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

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

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

41 (h) The office of administrative hearings and the director established
42 by this act shall be continuations of the office of administrative hearings
43 within the department of administration and the secretary of administra-

1 tion concerning adjudicative proceedings of the Kansas administrative
2 procedure act.

3 New Sec. 2. Except as otherwise provided in this act, on July 1, 2006,
4 any presiding officer in the administrative hearings section of all agencies
5 which conduct hearings pursuant to the Kansas administrative procedure
6 act, except those exempted pursuant to K.S.A. 77-551, and amendments
7 thereto, and support personnel for such presiding officers, shall be trans-
8 ferred to and shall become employees of the office of administrative hear-
9 ings established under this act. Such personnel shall retain all rights under
10 the state personnel system and retirement benefits under the laws of this
11 state which had accrued to or vested in such personnel prior to the ef-
12 fective date of this section. Such person's services shall be deemed to
13 have been continuous. All transfers of personnel positions in the classified
14 service under the Kansas civil service act shall be in accordance with civil
15 service laws and any rules and regulations adopted thereunder. This sec-
16 tion shall not affect any matter pending before an administrative hearing
17 officer at the time of the effective date of the transfer, and such matter
18 shall proceed as though no transfer of employment had occurred.

19 New Sec. 3. On and after July 1, 2006:

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

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

33 New Sec. 4. On and after July 1, 2006:

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

40 (b) No suit, action or other proceeding, judicial or administrative,
41 lawfully commenced, or which could have been commenced, by or against
42 any state agency mentioned in this act, or by or against any officer of the
43 state in such officer's official capacity or in relation to the discharge of

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

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

7 New Sec. 5. (a) On and after July 1, 2006, the balance of all funds
8 appropriated and reappropriated to the office of administrative hearings
9 within the department of administration concerning adjudicative pro-
10 ceedings of the Kansas administrative procedure act is hereby transferred
11 to the office of administrative hearings and shall be used only for the
12 purpose for which the appropriation was originally made.

13 (b) On and after July 1, 2006, the liability for all accrued compensa-
14 tion or salaries of officers and employees who, immediately prior to such
15 date, were engaged in the performance of powers, duties or functions of
16 the office of administrative hearings within the department of adminis-
17 tration concerning adjudicative proceedings of the Kansas administrative
18 procedure act, or who become a part of the office of administrative hear-
19 ings established by this act, or the powers, duties and functions of which
20 are transferred to the office of administrative hearings provided for by
21 this act, shall be assumed and paid by the office of administrative hearings
22 established by this act.

23 Sec. 6. On and after July 1, 2005, K.S.A. 2-1208a is hereby amended
24 to read as follows: 2-1208a. (a) If it shall appear to the secretary or an
25 authorized representative of the secretary from examination or analysis
26 of an official sample of a commercial fertilizer that the commercial fer-
27 tilizer is falsely labeled or fails to comply with the provisions of this act,
28 the secretary shall cause notice to be given to the person in possession of
29 the commercial fertilizer and the registrant that a hearing in relation
30 thereto will be held at a date and place named in such notice. Whereupon
31 the secretary or ~~an authorized representative of the secretary~~ *a presiding*
32 *officer from the office of administrative hearings* shall hold a hearing in
33 accordance with the provisions of the Kansas administrative procedure
34 act.

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

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

7 Sec. 7. On and after July 1, 2005, K.S.A. 2-3311 is hereby amended
8 to read as follows: 2-3311. Before any chemigation user registration or
9 chemigation user's permit shall be revoked, denied renewal or before it
10 shall be suspended for any cause, the secretary shall conduct a hearing in
11 accordance with the provisions of the Kansas administrative procedure
12 act. The notice of hearing shall be sent to the registrant or permit holder
13 at least 15 days prior to the hearing date and shall be served upon the
14 registrant or permit holder by letter sent to such person's address as
15 shown by the records of the secretary, setting out the time and place of
16 the hearing and alleged grounds for revocation or suspension. The reg-
17 istrant or permit holder shall have the right to appear in person and by
18 counsel and to testify and introduce evidence. If such person fails to
19 appear, the matter may be heard in such person's absence. Any such
20 hearing may be conducted by the secretary or ~~by a hearing officer duly~~
21 ~~appointed by the secretary~~ *a presiding officer from the office of admin-*
22 *istrative hearings.*

23 Sec. 8. On and after July 1, 2003, K.S.A. 8-2426 is hereby amended
24 to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments
25 thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any
26 person violating any provision thereof shall be subject to civil penalty of
27 not less than \$350 and not to exceed \$1,000, as determined by the director
28 of vehicles or a ~~person appointed by the director~~ *presiding officer from*
29 *the office of administrative hearings* after notice and hearing in accord-
30 ance with the provisions of the Kansas administrative procedure act. The
31 provisions of this section shall not affect the authority of the secretary of
32 revenue or any officer of the department of revenue in enforcing any
33 provision of the vehicle dealers and manufacturers licensing act, of which
34 K.S.A. 8-2425 and amendments thereto and this section shall be a part.

35 Sec. 9. On and after July 1, 2002, K.S.A. 21-3110 is hereby amended
36 to read as follows: 21-3110. The following definitions shall apply when
37 the words and phrases defined are used in this code, except when a par-
38 ticular context clearly requires a different meaning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 dismissed.

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

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

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

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

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

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

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

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

24 (e) A law enforcement officer.

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

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

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

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

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

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

40 (25) "Written instrument" means any paper, document or other in-
41 strument containing written or printed matter or the equivalent thereof,
42 used for purposes of reciting, embodying, conveying or recording infor-
43 mation, and any money, token, stamp, seal, badge, trademark, or other

1 evidence or symbol of value, right, privilege or identification, which is
2 capable of being used to the advantage or disadvantage of some person.

3 Sec. 10. On and after July 1, 2006, K.S.A. 31-140 is hereby amended
4 to read as follows: 31-140. Any person aggrieved by any order or ruling
5 issued pursuant to the provisions of this act may appeal such order or
6 ruling to the state fire marshal within 15 days from the date of the service
7 of such order by filing a notice of such appeal in the office of the state
8 fire marshal. The state fire marshal or ~~the state fire marshal's authorized~~
9 ~~representative~~ *a presiding officer from the office of administrative hear-*
10 *ings* shall hear such person within 30 days after the receipt of such notice
11 of appeal, and the hearing shall be held in accordance with the provisions
12 of the Kansas administrative procedure act. The state fire marshal shall
13 file a decision thereon and, unless by authority of the state fire marshal
14 the order is revoked or modified, the order shall be complied with within
15 the time fixed in such decision.

16 Sec. 11. On and after July 1, 2004, K.S.A. 36-509 is hereby amended
17 to read as follows: 36-509. (a) Whenever a timely request for a hearing
18 shall be filed with the secretary pursuant to the provisions of this act the
19 secretary shall set a time and place for such hearing which shall be held
20 within not to exceed 20 days of the request therefor. Upon such hearing,
21 the secretary or a ~~person designated by the secretary as a hearing officer~~
22 *presiding officer from the office of administrative hearings* may issue sub-
23 poenas for the attendance of witnesses and the production of relevant
24 books and papers. At the hearing, the applicant shall have the right to be
25 represented by counsel, to present witnesses and evidence in own behalf
26 and to cross-examine adverse witnesses.

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

32 Sec. 12. On and after July 1, 2006, K.S.A. 40-2,137 is hereby
33 amended to read as follows: 40-2,137. (a) The costs incurred by the de-
34 partment of insurance in conducting any administrative hearing author-
35 ized by article 33 of chapter 40 of the Kansas Statutes Annotated and
36 subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A.
37 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsec-
38 tion (a) of K.S.A. 40-1114 and K.S.A. 40-1120, and amendments thereto,
39 shall be assessed against insurers or rating organizations that are parties
40 to the hearing in such proportion as the commissioner of insurance may
41 determine upon consideration of all relevant circumstances including: (1)
42 The nature of the hearing; (2) whether the hearing was instigated by, or
43 for the benefit of a particular party or parties; (3) whether there is a

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

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

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

24 Sec. 13. On and after July 1, 2005, K.S.A. 44-322a is hereby amended
25 to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under
26 K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the
27 secretary of human resources, the secretary or the secretary's authorized
28 representative shall investigate the claim as provided in K.S.A. 44-322
29 and amendments thereto to determine if a dispute exists between the
30 parties to the claim. If the secretary or the secretary's authorized repre-
31 sentative determines that a dispute does exist and that the parties are
32 unable to resolve their differences, the secretary or ~~the secretary's au-~~
33 ~~thorized representative~~ *a presiding officer from the office of administra-*
34 *tive hearings* shall establish a time and place for a hearing on the matter.
35 The hearing shall be conducted in accordance with the provisions of the
36 Kansas administrative procedure act.

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

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

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

14 Sec. 14. On and after July 1, 2002, K.S.A. 44-1005 is hereby
15 amended to read as follows: 44-1005. (a) Any person claiming to be ag-
16 grieved by an alleged unlawful employment practice or by an alleged
17 unlawful discriminatory practice, and who can articulate a prima facie
18 case pursuant to a recognized legal theory of discrimination, may, per-
19 sonally or by an attorney-at-law, make, sign and file with the commission
20 a verified complaint in writing, articulating the prima facie case, which
21 shall also state the name and address of the person, employer, labor or-
22 ganization or employment agency alleged to have committed the unlawful
23 employment practice complained of or the name and address of the per-
24 son alleged to have committed the unlawful discriminatory practice com-
25 plained of, and which shall set forth the particulars thereof and contain
26 such other information as may be required by the commission.

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

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

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

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

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

33 (f) In case of failure to eliminate such practices by conference and
34 conciliation, or in advance thereof, if in the judgment of the commissioner
35 or the commission circumstances so warrant, the commissioner or the
36 commission shall commence a hearing in accordance with the provisions
37 of the Kansas administrative procedure act naming as parties the com-
38 plainant and the person, employer, labor organization, employment
39 agency, realtor or financial institution named in such complaint, hereinafter
40 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*
43 *administrative hearings* shall be designated as the presiding officer. The

1 place of such hearing shall be in the county where respondent is doing
2 business and the acts complained of occurred.

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

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

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

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

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

7 (k) If the presiding officer finds a respondent has engaged in or is
8 engaging in any unlawful employment practice or unlawful discriminatory
9 practice as defined in this act, the presiding officer shall render an order
10 requiring such respondent to cease and desist from such unlawful em-
11 ployment practice or such unlawful discriminatory practice and to take
12 such affirmative action, including but not limited to the hiring, reinstatement,
13 or upgrading of employees, with or without back pay, and the admission or
14 restoration to membership in any respondent labor organizations; the admission to and full and equal enjoyment of the goods,
15 services, facilities, and accommodations offered by any respondent place
16 of public accommodation denied in violation of this act, as, in the judgment
17 of the presiding officer, will effectuate the purposes of this act, and
18 including a requirement for report of the manner of compliance. Such
19 order may also include an award of damages for pain, suffering and humiliation
20 which are incidental to the act of discrimination, except that an
21 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, 2005, 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 willful violation of the provisions of this act or for failure to comply with
43

1 any provision of a reclamation plan.

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

9 Sec. 16. On and after July 1, 2004, K.S.A. 2001 Supp. 65-163 is
10 hereby amended to read as follows: 65-163. (a) (1) No person shall op-
11 erate a public water supply system within the state without a public water
12 supply system permit from the secretary. An application for a public water
13 supply system permit shall be submitted for review and approval prior to
14 construction and shall include: (A) A copy of the plans and specifications
15 for the construction of the public water supply system or the extension
16 thereof; (B) a description of the source from which the water supply is
17 to be derived; (C) the proposed manner of storage, purification or treat-
18 ment for the supply; and (D) such other data and information as required
19 by the secretary of health and environment. No source of water supply
20 in substitution for or in addition to the source described in the application
21 or in any subsequent application for which a public water supply system
22 permit is issued shall be used by a public water supply system, nor shall
23 any change be made in the manner of storage, purification or treatment
24 of the water supply without an additional public water supply system
25 permit obtained in a manner similar to that prescribed by this section
26 from the secretary.

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

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

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

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

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

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

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

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

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

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

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

13 (e) The secretary shall establish by rule and regulation a system of
14 fees for the inspection and regulation of public water supplies. No such
15 fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public
16 water supply system. All such fees shall be paid quarterly in the manner
17 provided for fees imposed on retail sales by public water supply systems
18 pursuant to K.S.A. 82a-954, and amendments thereto. The secretary shall
19 remit all moneys collected for such fees to the state treasurer in accord-
20 ance with the provisions of K.S.A. 75-4215, and amendments thereto.
21 Upon receipt of each such remittance, the state treasurer shall deposit
22 the entire amount in the state treasury to the credit of the public water
23 supply fee fund created by 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, 2004, 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, 2004, K.S.A. 2001 Supp. 65-525 is
20 hereby amended to read as follows: 65-525. (a) Records in the possession
21 of the department of health and environment or its agents regarding child
22 care facilities, maternity centers or family day care homes shall not be
23 released publicly in a manner that would identify individuals, unless re-
24 quired by law.

25 (b) Records containing the name, address and telephone number of
26 a child care facility, maternity center or family day care home in the
27 possession of the department of health and environment or its agents
28 shall not be released publicly unless required by law.

29 (c) Records that cannot be released by subsection (a) or (b) may be
30 released to: (1) An agency or organization authorized to receive notice
31 under K.S.A. 65-506, and amendments thereto; (2) a criminal justice
32 agency; (3) any state or federal agency that provides child care services,
33 funding for child care or child protective services; (4) any federal agency
34 for the purposes of compliance with federal funding requirements; (5)
35 any local fire department; (6) any child and adult care food program
36 sponsoring agency; or (7) any local disaster agency.

37 (d) Any state or federal agency or any person receiving records under
38 subsection (a) or (b) shall not disseminate the records without the consent
39 of the person whose records will be disseminated unless required by law.
40 Any state or federal agency or any person receiving records under sub-
41 section (e) may disseminate the information contained in the records
42 without the consent of the person whose records will be disseminated.

43 (e) The secretary of health and environment may release the name,

1 address and telephone number of a maternity center, child care facility
2 or family day care home when the secretary determines that the release
3 of the information is necessary to protect the health, safety or welfare of
4 the public or the patients or children enrolled in the maternity center,
5 child care facility or family day care home.

6 (f) Any records under subsection (a) or (b) shall be available to any
7 member of the standing committee on appropriations of the house of
8 representatives or the standing committee on ways and means of the
9 senate carrying out such member's or committee's official functions in
10 accordance with K.S.A. 75-4319, and amendments thereto, in a closed or
11 executive meeting. Except in limited conditions established by $\frac{2}{3}$ of the
12 members of such committee, records received by the committee shall not
13 be further disclosed. Unauthorized disclosure may subject such member
14 to discipline or censure from the house of representatives or senate. Such
15 records shall not identify individuals but shall include data and contract
16 information concerning specific facilities.

17 (g) In any hearings conducted under the licensing or regulation provisions
18 of K.S.A. 65-501 *et seq.* and amendments thereto, the ~~hearing~~
19 *presiding* officer may close the hearing to the public to prevent public
20 disclosure of matters relating to persons restricted by other laws.

21 Sec. 19. On and after July 1, 2004, K.S.A. 2001 Supp. 65-526 is
22 hereby amended to read as follows: 65-526. (a) The secretary of health
23 and environment, in addition to any other penalty prescribed under article
24 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
25 thereto, may assess a civil fine, after proper notice and an opportunity to
26 be heard *in accordance with the Kansas administrative procedure act*,
27 against a licensee or registrant for each violation of such provisions or
28 rules and regulations adopted pursuant thereto which affect significantly
29 and adversely the health, safety or sanitation of children in a child care
30 facility or family day care home. Each civil fine assessed under this section
31 shall not exceed \$500. In the case of a continuing violation, every day
32 such violation continues shall be deemed a separate violation.

33 (b) All fines assessed and collected under this section shall be remit-
34 ted to the state treasurer in accordance with the provisions of K.S.A. 75-
35 4215, and amendments thereto. Upon receipt of each such remittance,
36 the state treasurer shall deposit the entire amount in the state treasury
37 to the credit of the state general fund.

38 Sec. 20. On and after July 1, 2004, K.S.A. 65-673 is hereby amended
39 to read as follows: 65-673. (a) The authority to promulgate rules and
40 regulations for the efficient enforcement of this act is hereby vested in
41 the secretary. The secretary is hereby authorized to make the regulations
42 promulgated under this act conform, insofar as practicable, with those
43 promulgated under the federal act.

1 (b) Hearings authorized or required by this act shall be conducted by
2 the secretary or by a ~~hearing officer designated by the secretary~~ *presiding*
3 *officer from the office of administrative hearings* for this purpose. The
4 secretary shall prescribe by rule and regulation the procedure for con-
5 ducting hearings. The ~~hearing~~ *presiding* officer shall have the same pow-
6 ers in conducting a hearing as the secretary. In conducting a hearing the
7 secretary or the ~~hearing~~ *presiding* officer may issue subpoenas to compel
8 the attendance of witnesses, administer oaths, take testimony, require the
9 production of books, papers, records, correspondence or other docu-
10 ments which the secretary or the ~~hearing~~ *presiding* officer deems relevant
11 and render decisions. In case of the refusal of any person to comply with
12 any subpoena issued under this section or to testify with respect to any
13 matter which the person may be lawfully questioned, the district court of
14 any county on application of the secretary may issue an order requiring
15 such person to comply with the subpoena and to testify, and any failure
16 to obey the order of the court may be punished by the court as a contempt
17 thereof. Notwithstanding the foregoing provisions of this subsection,
18 hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and
19 amendments thereto, shall be conducted in accordance with the provi-
20 sions of the Kansas administrative procedure act.

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

27 Sec. 21. On and after July 1, 2004, K.S.A. 65-2305 is hereby
28 amended to read as follows: 65-2305. (a) The secretary of health and
29 environment shall have the power and authority and is hereby charged
30 with the duty of enforcing the provisions of this act, and the secretary is
31 hereby authorized and directed to make, amend or revoke rules and reg-
32 ulations and orders for the efficient enforcement of this act.

33 (b) In the event of findings by the secretary that there is an existing
34 or imminent shortage of any ingredient required to enrich flour, white
35 bread or rolls in order to comply with this act, and that because of such
36 shortage the sale and distribution of flour or white bread or rolls may be
37 impeded by the enforcement of this act, the secretary shall issue an order,
38 to be effective immediately upon issuance, permitting the omission of
39 such ingredient from flour or white bread or rolls; and if the secretary
40 finds it necessary or appropriate, excepting such foods from the labeling
41 requirements of this act until the further order of the secretary. Any such
42 findings may be made without hearing on the basis of an order or of
43 factual information supplied by the appropriate agency or officer. In the

1 absence of any such order of the appropriate agency or factual informa-
2 tion supplied by it, the secretary on the secretary's own motion may, and
3 upon receiving the sworn statement of 10 or more persons subject to this
4 act that they believe such a shortage exists or is imminent shall hold a
5 public hearing as provided in subsection (f) with respect thereto, at which
6 any interested person may present evidence; and shall make findings
7 based upon the evidence presented.

8 (c) Whenever the secretary has reason to believe that such shortage
9 no longer exists, the secretary shall hold a public hearing as provided in
10 subsection (f), after notice shall have been given as provided in K.S.A.
11 77-421 prior to adoption of rules and regulations, at which any interested
12 person may present evidence, and the secretary shall make findings based
13 upon the evidence so presented. If the secretary's findings be that such
14 shortage no longer exists, the secretary shall issue an order revoking such
15 previous order. Undisposed floor stocks of flour on hand at the effective
16 date of such revocation order, or flour manufactured prior to such effec-
17 tive date, for sale in this state may thereafter be lawfully sold or disposed
18 of.

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

21 (e) For the purposes of this act, the secretary is authorized to take
22 samples for analysis and to conduct examinations and investigations
23 through any officers or employees under the secretary's supervision, and
24 all such officers and employees shall have authority to enter, at reasonable
25 times, any factory, mill, warehouse, shop or establishment where flour,
26 white bread or rolls are manufactured, processed, packed, sold, or held,
27 or any vehicle being used for the transportation thereof, and to inspect
28 any such place or vehicle and any flour, white bread or rolls therein, and
29 all pertinent equipment, materials, containers and labeling.

30 ~~The secretary shall prescribe by rule and regulation the procedure~~
31 ~~for conducting a hearing under this section and may designate a hearing~~
32 ~~officer to conduct the hearing. The hearing officer shall have the same~~
33 ~~powers in conducting the hearing as the secretary. All administrative pro-~~
34 ~~ceedings conducted pursuant to article 23 of chapter 65 of the Kansas~~
35 ~~Statutes Annotated, and amendments thereto, shall be conducted in ac-~~
36 ~~cordance with the provisions of the Kansas administrative procedures act~~
37 ~~and the act for judicial review and civil enforcement of agency actions.~~
38 In conducting the hearing the secretary or the ~~hearing~~ *presiding* officer
39 may issue subpoenas to compel the attendance of witnesses, administer
40 oaths, take testimony, require the production of books, papers, records,
41 correspondence or other documents which the secretary or the ~~hearing~~
42 *presiding* officer deems relevant and render decisions. In case of the
43 refusal of any person to comply with any subpoena issued under this

1 section or to testify with respect to any matter *about* which the person
2 may be lawfully questioned, the district court of any county on application
3 of the secretary may issue an order requiring such person to comply with
4 the subpoena and to testify, and any failure to obey the order of the court
5 may be punished by the court as a contempt thereof.

6 Sec. 22. On and after July 1, 2004, K.S.A. 65-3483 is hereby
7 amended to read as follows: 65-3483. (a) If, within 150 days after receipt
8 of an application, the secretary has not denied the application, the sec-
9 retary shall notify the board of county commissioners and the governing
10 bodies of all cities located within a ten-mile radius of the proposed facility.
11 The secretary also shall notify the state corporation commission and the
12 secretary of wildlife and parks of the proposed facility.

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

17 (c) Within 10 days after the secretary has determined that such ap-
18 plication should be approved, the secretary shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (A) The natural environment and ecology;

12 (B) public health and safety;

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

14 (D) water and air quality and wildlife.

15 (g) The secretary also shall consider the concerns and objections sub-
16 mitted by the public. The secretary shall facilitate efforts to provide that
17 the concerns and objections are mitigated by establishing additional stip-
18 ulations specifically applicable to the proposed site and operation at that
19 site. The secretary, to the fullest extent practicable, shall integrate by
20 stipulation the provisions of the local ordinances, permits or
21 requirements.

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

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

28 Sec. 23. On and after July 1, 2004, K.S.A. 65-3488 is hereby
29 amended to read as follows: 65-3488. (a) Permits for PCB disposal facil-
30 ities shall be issued for fixed terms not to exceed 10 years.

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

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

42 (d) In case any permit is denied, suspended or revoked any person
43 aggrieved by such decision may request a hearing before the secretary in

1 the same manner provided by K.S.A. 65-3440, and amendments thereto.
2 *Such hearings shall be conducted in accordance with the Kansas admin-*
3 *istrative procedure act.*

4 Sec. 24. On and after July 1, 2004, K.S.A. 65-3490 is hereby
5 amended to read as follows: 65-3490. (a) The secretary or the director of
6 the division of environment, if designated by the secretary, upon a finding
7 that a person has violated any provision of this act or any rule and regu-
8 lation adopted by the secretary pursuant to this act may impose a penalty
9 not to exceed \$10,000 which shall constitute an actual and substantial
10 economic deterrent to the violation for which it is assessed and, in the
11 case of a continuing violation, every day such violation continues shall be
12 deemed a separate violation.

13 (b) No penalty shall be imposed pursuant to this section except after
14 notice of violation and opportunity for hearing upon the written order of
15 the secretary or the director of the division of environment, if designated
16 by the secretary, to the person who committed the violation. The order
17 shall state the violation, the penalty to be imposed and, in the case of an
18 order of the director of the division of environment, the right to appeal
19 to the secretary for a hearing thereon. Any person may appeal an order
20 of the director of the division of environment by making a written request
21 to the secretary for a hearing within 15 days of ~~receipt~~ *service* of such
22 order. The secretary shall hear the person within 30 days after receipt of
23 such request, unless such time period is waived or extended by written
24 consent of all parties or by a showing of good cause, ~~and shall give not~~
25 ~~less than 10 days' written notice of the time and place of the hearing.~~
26 ~~Within 30 days after such hearing and receipt of briefs or oral arguments,~~
27 ~~unless such time period is waived or extended by written consent of all~~
28 ~~parties or by a showing of good cause, the secretary shall affirm, reverse~~
29 ~~or modify the order of the director and shall specify the reasons therefor.~~
30 ~~Nothing in this act shall require the observance of formal rules of evi-~~
31 ~~dence or pleading at any hearing before the secretary or director. Hear-~~
32 ~~ings under this subsection shall be conducted in accordance with the Kan-~~
33 ~~sas administrative procedure act.~~

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

38 Sec. 25. On and after July 1, 2005, K.S.A. 2001 Supp. 66-1,117 is
39 hereby amended to read as follows: 66-1,117. The corporation commis-
40 sion shall prescribe forms of applications for certificates, permits and
41 licenses for the use of prospective applicants and shall make regulations
42 for the filing thereof. The commission may ~~designate one of its attorneys~~
43 ~~use a presiding officer from the office of administrative hearings as a~~

1 presiding officer for any hearing that may be required concerning any
2 application for a certificate or license and the presiding officer shall make
3 written findings and recommendations to the commission.

4 Sec. 26. On and after July 1, 2004, K.S.A. 2001 Supp. 74-4904 is
5 hereby amended to read as follows: 74-4904. (1) The system may sue and
6 be sued in its official name, but its trustees, officers, employees and agents
7 shall not be personally liable for acts of the system unless such person
8 acted with willful, wanton or fraudulent misconduct or intentionally tor-
9 tious conduct. Any agreement in settlement of litigation involving the
10 system and the investment of moneys of the fund is a public record as
11 provided in K.S.A. 45-215 *et seq.* and amendments thereto and subject
12 to the provisions of that act. The service of all legal process and of all
13 notices which may be required to be in writing, whether legal proceedings
14 or otherwise, shall be had on the executive director at such executive
15 director's office. All actions or proceedings directly or indirectly against
16 the system shall be brought in Shawnee county.

17 (2) Any person aggrieved by any order or decision of the board made
18 without a hearing, may, within 30 days after notice of the order or decision
19 of the board make written request to the board for a hearing thereon.
20 The board shall hear such party or parties in accordance with the provi-
21 sions of the Kansas administrative procedure act at its next regular meet-
22 ing or at a special meeting within 60 days after receipt of such request.
23 For the purpose of any hearing under this section, the board ~~may appoint~~
24 ~~one or more presiding officers. Any such presiding officer shall be a mem-~~
25 ~~ber of the board, an employee of the board or any other person designated~~
26 ~~by the board to serve as such presiding officer. Any such appointment~~
27 ~~shall apply to a particular hearing or to a set or class of hearings as spec-~~
28 ~~ified by the board in making such appointment~~ *use a presiding officer*
29 *from the office of administrative hearing.* The board shall review an initial
30 order resulting from a hearing under this section. Any member of the
31 board who serves as a presiding officer shall be reimbursed for actual and
32 necessary expenses and shall receive compensation in an amount fixed by
33 the board not to exceed the per diem compensation allowable for mem-
34 bers of the board. The board is hereby authorized to enter into a contract
35 with ~~any other person designated by the board to serve as a presiding~~
36 ~~officer who is not a member or employee of the board~~ *the office of ad-*
37 *ministrative hearing* and to provide for reimbursement for actual and
38 necessary expenses and compensation for ~~such person serving as a pre-~~
39 ~~siding officer.~~

40 Sec. 27. On and after July 1, 2004, K.S.A. 2001 Supp. 74-8804 is
41 hereby amended to read as follows: 74-8804. (a) During race meetings,
42 the commission and its designated employees may observe and inspect
43 all racetrack facilities operated by licensees and all racetracks simulcasting

1 races to racetrack facilities in Kansas, including but not limited to all
2 machines, equipment and facilities used for parimutuel wagering.

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

7 (c) The commission may examine, or cause to be examined by any
8 agent or representative designated by the commission, any books, papers,
9 records or memoranda of any licensee, or of any racetrack or business
10 involved in simulcasting races to racetrack facilities in Kansas, for the
11 purpose of ascertaining compliance with any provision of this act or any
12 rule and regulation adopted hereunder.

13 (d) The commission may issue subpoenas to compel access to or for
14 the production of any books, papers, records or memoranda in the cus-
15 tody or control of any licensee or officer, member, employee or agent of
16 any licensee, or to compel the appearance of any licensee or officer, mem-
17 ber, employee or agent of any licensee, or of any racetrack or business
18 involved in simulcasting races to racetrack facilities in this state, for the
19 purpose of ascertaining compliance with any of the provisions of this act
20 or any rule and regulation adopted hereunder. Subpoenas issued pursuant
21 to this subsection may be served upon individuals and corporations in the
22 same manner provided in K.S.A. 60-304 and amendments thereto for the
23 service of process by any officer authorized to serve subpoenas in civil
24 actions or by the commission or an agent or representative designated by
25 the commission. In the case of the refusal of any person to comply with
26 any such subpoena, the executive director may make application to the
27 district court of any county where such books, papers, records, memo-
28 randa or person is located for an order to comply.

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

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

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

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

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

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

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

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

14 (j) The commission, within 72 hours after any action taken by a stew-
15 ard or racing judge and upon appeal by any interested party or upon its
16 own initiative, may overrule any decision of a steward or racing judge,
17 other than a decision regarding disqualifications for interference during
18 the running of a race, if the preponderance of evidence indicates that:

19 (1) The steward or racing judge mistakenly interpreted the law;

20 (2) new evidence of a convincing nature is produced; or

21 (3) the best interests of racing and the state may be better served.

22 A decision of the commission to overrule any decision of a steward or
23 racing judge shall not change the distribution of parimutuel pools to the
24 holders of winning tickets. A decision of the commission which would
25 affect the distribution of purses in any race shall not result in a change
26 in that distribution unless a written claim is submitted to the commission
27 within 48 hours after completion of the contested race by one of the
28 owners or trainers of a horse or greyhound which participated in such
29 race and a preponderance of evidence clearly indicates to the commission
30 that one or more of the grounds for protest, as provided for in rules and
31 regulations of the commission, has been substantiated.

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

37 (l) The commission shall adopt rules and regulations specifying and
38 regulating:

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

42 (2) that equipment for administering drugs or medications to horses
43 or greyhounds which may be possessed within the confines of a racetrack

1 facility.

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

6 (n) The commission shall require fingerprinting of all persons nec-
7 essary to verify qualification for employment by the commission or to
8 verify qualification for any license, including a simulcasting license, issued
9 pursuant to this act. The commission shall submit such fingerprints to the
10 Kansas bureau of investigation and to the federal bureau of investigation
11 for the purposes of verifying the identity of such persons and obtaining
12 records of criminal arrests and convictions.

13 (o) The commission may receive from commission security person-
14 nel, the Kansas bureau of investigation or other criminal justice agencies,
15 including but not limited to the federal bureau of investigation and the
16 federal internal revenue service, such criminal history record information
17 (including arrest and nonconviction data), criminal intelligence informa-
18 tion and information relating to criminal and background investigations
19 as necessary for the purpose of determining qualifications of licensees of
20 the commission, employees of the commission, applicants for employ-
21 ment by the commission, and applicants for licensure by the commission,
22 including applicants for simulcasting licenses. Upon the written request
23 of the chairperson of the commission, the commission may receive from
24 the district courts such information relating to juvenile proceedings as
25 necessary for the purpose of determining qualifications of employees of
26 and applicants for employment by the commission and determining qual-
27 ifications of licensees of and applicants for licensure by the commission.
28 Such information, other than conviction data, shall be confidential and
29 shall not be disclosed except to members and employees of the commis-
30 sion as necessary to determine qualifications of such licensees, employees
31 and applicants. Any other disclosure of such confidential information is a
32 class A misdemeanor and shall constitute grounds for removal from office,
33 termination of employment or denial, revocation or suspension of any
34 license issued under this act.

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

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

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

3 Sec. 28. On and after July 1, 2004, K.S.A. 2001 Supp. 74-8816 is
4 hereby amended to read as follows: 74-8816. (a) The commission shall
5 require occupation licenses for:

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

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

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

17 (c) A person required to be licensed pursuant to subsection (a) shall
18 apply for such license in a manner and upon forms prescribed and fur-
19 nished by the commission. The commission may require the applicant to
20 submit to fingerprinting. Occupation licenses shall be issued for a period
21 established by the commission but not less than one year or more than
22 three years. The commission shall establish the amount of application
23 fees and license fees for different types of occupation licenses, but no
24 such fee shall exceed \$200 a year. The application fee shall not be re-
25 fundable if the applicant fails to qualify for a license and shall include the
26 cost of processing fingerprints if they are required by the commission.

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

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

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

42 (2) has been convicted of a violation of any law of any state or of the
43 United States involving gambling or controlled substances or has been

1 adjudicated in the last five years in any such court of committing as a
2 juvenile an act which, if committed by an adult, would constitute such a
3 violation;

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

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

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

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

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

15 (8) has failed to meet any monetary or tax obligation to the federal
16 government or to any state or local government, whether or not relating
17 to the conduct or operation of a race meet held in this state or any other
18 jurisdiction.

19 (f) The commission may suspend or revoke an occupation license for
20 any reason which would justify refusal to issue such a license and may
21 impose a fine not exceeding \$5,000 for each violation upon any occupation
22 licensee found to have violated any provision of this act or any rule and
23 regulation of the commission. Such fine may be imposed in addition to
24 or in lieu of suspending or revoking such person's occupation license.
25 Proceedings for the suspension or revocation of an occupation license or
26 imposition of a fine pursuant to this subsection shall be conducted by the
27 commission or ~~its appointed hearing officer~~ *a presiding officer from the*
28 *office of administrative hearings* in accordance with the Kansas admin-
29 istrative procedure act, except that, and notwithstanding the provision of
30 K.S.A. 77-512, subsection (b) of K.S.A. 77-526 and subsection (b)(3) of
31 K.S.A. 77-530~~(b)(3)~~, and amendments thereto, any order entered by a
32 ~~hearing officer appointed by the commission~~ *presiding officer* imposing
33 such a fine or suspension shall be a final order and effective when served.

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

42 (h) The stewards at any horse race meeting and the racing judges at
43 any greyhound race meeting may impose on an occupation licensee a civil

1 fine not exceeding \$500 or may suspend any occupation licensee's license
2 for a period not exceeding 15 days upon a finding by at least two of the
3 stewards or racing judges that there is probable cause to believe that the
4 occupation licensee has violated the provisions of this act or any rule or
5 regulation of the commission. No such fine or suspension shall be ordered
6 except after notice and opportunity for hearing in accordance with pro-
7 cedures established by rules and regulations of the commission. Any order
8 imposing such a fine or suspension is effective when rendered. The order
9 shall be subject to appeal to the commission, and may be stayed pending
10 such appeal, as provided by rules and regulations of the commission.
11 Proceedings on appeal shall be in accordance with the provisions of the
12 Kansas administrative procedure act.

13 Sec. 29. On and after July 1, 2004, K.S.A. 2001 Supp. 74-8817 is
14 hereby amended to read as follows: 74-8817. (a) No organization licensee
15 or facility manager licensee shall permit any business not owned and
16 operated by the organization licensee to sell goods or services within a
17 racetrack facility where the organization licensee conducts race meetings
18 unless such business has been issued a concessionaire license by the
19 commission.

20 (b) Businesses required to be licensed pursuant to this section shall
21 apply for concessionaire licenses in a manner and upon forms prescribed
22 and furnished by the commission. The commission shall require disclo-
23 sure of information about the owners and officers of each applicant and
24 may require such owners and officers to submit to fingerprinting. The
25 commission also may require disclosure of information about and finger-
26 printing of such employees of each applicant as the commission considers
27 necessary. Concessionaire licenses shall be issued for a period of time
28 established by the commission but not to exceed 10 years. The commis-
29 sion shall establish a schedule of application fees and license fees for
30 concessionaire licenses based upon the type and size of business. The
31 application fee shall not be refundable if the business fails to qualify for
32 a license. If the application fee is insufficient to pay the reasonable ex-
33 penses of processing the application and investigating the applicant's qual-
34 ifications for licensure, the commission shall require the applicant to pay
35 to the commission, at such times and in such form as required by the
36 commission, any additional amounts necessary to pay such expenses. No
37 license shall be issued to an applicant until the applicant has paid such
38 additional amounts in full, and such amounts shall not be refundable
39 except to the extent that they exceed the actual expenses of processing
40 the application and investigating the applicant's qualifications for
41 licensure.

42 (c) The commission may require applicants as a condition of licensure
43 to consent to allow agents of the Kansas bureau of investigation or security

1 personnel of the commission to search without warrant the licensee's
2 premises and personal property and the persons of its owners, officers
3 and employees while engaged in the licensee's business within the race-
4 track facility or adjacent facilities under the control of the organization
5 licensee for the purpose of investigating criminal violations of this act or
6 violations of rules and regulations of the commission.

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

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

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

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

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

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

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

37 (f) The commission may provide by rules and regulations for the tem-
38 porary suspension of a concessionaire license by summary adjudicative
39 proceedings in accordance with the Kansas administrative procedure act
40 upon finding that there is probable cause to believe that grounds exist for
41 a permanent suspension or revocation of such license. Such suspension
42 shall be for a period not exceeding 30 days. Upon expiration of such
43 suspension, the license shall be restored unless the license has been sus-

1 pending or revoked as a result of proceedings conducted pursuant to sub-
2 section (e).

3 Sec. 30. On and after July 1, 2004, K.S.A. 2001 Supp. 74-8837 is
4 hereby amended to read as follows: 74-8837. (a) No organization licensee
5 or facility manager licensee shall permit any business not owned and
6 operated by the organization licensee to provide integral racing or wa-
7 gering equipment or services, as designated by the commission, to an
8 organization licensee unless such business has been issued a racing or
9 wagering equipment or services license by the commission. Such equip-
10 ment and services include but are not limited to totalisator, photo finish,
11 video replay and video reception and transmission equipment or services.

12 (b) Businesses required to be licensed pursuant to this section shall
13 apply for racing or wagering equipment or services licenses in a manner
14 and upon forms prescribed and furnished by the commission. The com-
15 mission shall require disclosure of information about the owners and of-
16 ficers of each applicant and may require such owners and officers to
17 submit to fingerprinting. The commission also may require disclosure of
18 information about and fingerprinting of such employees of each applicant
19 as the commission considers necessary. Racing or wagering equipment or
20 services licenses shall be issued for a period of time established by the
21 commission but not to exceed 10 years. The commission shall establish a
22 schedule of application fees and license fees for racing or wagering equip-
23 ment or services licenses based upon the type and size of business. The
24 application fee shall not be refundable if the business fails to qualify for
25 a license. If the application fee is insufficient to pay the reasonable ex-
26 penses of processing the application and investigating the applicant's qual-
27 ifications for licensure, the commission shall require the applicant to pay
28 to the commission, at such times and in such form as required by the
29 commission, any additional amounts necessary to pay such expenses. No
30 license shall be issued to an applicant until the applicant has paid such
31 additional amounts in full, and such amounts shall not be refundable
32 except to the extent that they exceed the actual expenses of processing
33 the application and investigating the applicant's qualifications for
34 licensure.

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

43 (d) Denial of a racing or wagering equipment or services license by

1 the commission shall be in accordance with the Kansas administrative
2 procedure act. The commission may refuse to issue a racing or wagering
3 equipment or services license to any business if any person having an
4 ownership interest in such business, any person who is an officer of such
5 business or any person employed by such business within the racetrack
6 facility:

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

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

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

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

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

25 (e) The commission may suspend or revoke the racing or wagering
26 equipment or services license of any business for any reason which would
27 justify refusal to issue such a license. Proceedings to suspend or revoke
28 such license shall be conducted by the commission or ~~its appointed hear-~~
29 ~~ing officer~~ *a presiding officer from the office of administrative hearings*
30 in accordance with the provisions of the Kansas administrative procedure
31 act.

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

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

43 Sec. 31. On and after July 1, 2002, K.S.A. 2001 Supp. 75-37,121 is

1 hereby amended to read as follows: 75-37,121. ~~On and after July 1, 1998:~~

2 (a) There is created the office of administrative hearings within the de-
3 partment of administration, to be headed by a director appointed by the
4 secretary of administration. *The director shall be in the unclassified serv-*
5 *ice under the Kansas civil service act.*

6 (b) The office ~~shall~~ *may* employ ~~administrative law judges presiding~~
7 ~~officers~~, court reporters and other support personnel as necessary to con-
8 duct proceedings required by the Kansas administrative procedure act for
9 adjudicative proceedings of the ~~department of social and rehabilitation~~
10 ~~services state agencies, boards and commissions specified in subsection~~
11 ~~(h)~~. The office shall conduct adjudicative proceedings of ~~the department~~
12 ~~of social and rehabilitation services which are not under the Kansas ad-~~
13 ~~ministrative procedure act any state agency which is specified in subsec-~~
14 ~~tion (h)~~ when requested by such agency. Only a person admitted to prac-
15 tice law in this state *or a person directly supervised by a person admitted*
16 *to practice law in this state* may be employed as ~~an administrative law~~
17 ~~judge a presiding officer~~. The office may employ regular part-time per-
18 sonnel. Persons employed by the office shall be under the classified civil
19 service.

20 (c) If the office cannot furnish one of its ~~administrative law judges~~
21 ~~presiding officers~~ in response to ~~the department of social and rehabilita-~~
22 ~~tion services a requesting agency's~~ request, the director shall designate in
23 writing a full-time employee of an agency other than the ~~department of~~
24 ~~social and rehabilitation services requesting agency~~ to serve as ~~adminis-~~
25 ~~trative law judge presiding officer~~ for the proceeding, but only with the
26 consent of the employing agency. The designee must possess the same
27 qualifications required of ~~administrative law judges presiding officers~~ em-
28 ployed by the office.

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

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

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

38 ~~—(2)—~~ to establish procedures for agencies to request and for the director
39 to assign ~~administrative law judges. The department of social and reha-~~
40 ~~ilitation services presiding officers.~~ An agency may neither select nor
41 reject any individual ~~administrative law judge presiding officer~~ for any
42 proceeding except in accordance with the Kansas administrative proce-
43 dure act;

1 ~~(3)~~ (2) to establish procedures and adopt forms, consistent with the
2 Kansas administrative procedure act, the model rules of procedure, and
3 other provisions of law, to govern ~~administrative law judges, presiding~~
4 ~~officers; and~~

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

7 ~~(5)~~ (3) to facilitate the performance of the responsibilities conferred
8 upon the office by the Kansas administrative procedure act.

9 (f) The director may:

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

11 ~~(2) implement the provisions of this section and rules and regulations~~
12 ~~adopted under its authority.~~

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

16 (h) *The following state agencies, boards and commissions shall utilize*
17 *the office of administrative hearings for adjudicative proceedings in which*
18 *the presiding officer is not the agency head or one or more members of*
19 *the agency head:*

20 (1) *On and after July 1, 2002: Department of social and rehabilitation*
21 *services, juvenile justice authority, department on aging, state board of*
22 *pharmacy, board of nursing, Kansas board of examiners in fitting and*
23 *dispensing of hearing aids, board of examiners in optometry, emergency*
24 *medical services board, Kansas dental board, emergency medical services*
25 *council and Kansas human rights commission.*

26 (2) *On and after July 1, 2003: Kansas department of wildlife and*
27 *parks, department of revenue, state board of veterinary examiners, be-*
28 *havioral sciences regulatory board, Kansas real estate commission, real*
29 *estate appraisal board, state board of mortuary arts, state board of cos-*
30 *metology, Kansas board of barbering, state board of technical professions*
31 *and state board of tax appeals.*

32 (3) *On and after July 1, 2004: Department of health and environment,*
33 *state board of healing arts, Kansas lottery, Kansas racing commission,*
34 *Kansas state banking board, state department of credit unions, office of*
35 *the securities commissioner of Kansas, Kansas public employees retire-*
36 *ment system, board of adult care home administrators, state treasurer,*
37 *board of accountancy and pooled money investment board.*

38 (4) *On and after July 1, 2005: Department of agriculture except water*
39 *transfer hearings pursuant to K.S.A. 82a-1501a et seq., and amendments*
40 *thereto, department of human resources, state corporation commission,*
41 *state conservation commission, Kansas water office, agricultural labor re-*
42 *lations board, Kansas animal health department and citizens' utility rate*
43 *payor board.*

1 (i) Effective July 1, 1998, personnel in the administrative hearings
2 section of the department of social and rehabilitation services and support
3 personnel for such administrative law judges, shall be transferred to the
4 office of administrative hearings. Such personnel shall retain all rights
5 under the state personnel system and retirement benefits under the laws
6 of this state, and such person's services shall be deemed to have been
7 continuous. This act shall not affect any matter pending before an ad-
8 ministrative hearing officer at the time of the effective date of the transfer,
9 and such matter shall proceed as though no transfer of employment had
10 occurred.

11 (j) (1) *Effective July 1, 2002, any presiding officer in the administra-*
12 *tive hearings section of all agencies specified in subsection (h)(1) which*
13 *conduct hearings pursuant to the Kansas administrative procedure act,*
14 *except those exempted pursuant to K.S.A. 75-551 and amendments*
15 *thereto, and support personnel for such presiding officers, shall be trans-*
16 *ferred to and shall become employees of the office of administrative hear-*
17 *ings. Such personnel shall retain all rights under the state personel sys-*
18 *tem and retirement benefits under the laws of this state which had accrued*
19 *to or vested in such personnel prior to the effective date of this section.*
20 *Such person's services shall be deemed to have been continuous. All trans-*
21 *fers of personnel positions in the classified service under the Kansas civil*
22 *service act shall be in accordance with civil service laws and any rules*
23 *and regulations adopted thereunder. This section shall not affect any mat-*
24 *ter pending before an administrative hearing officer at the time of the*
25 *effective date of the transfer, and such matter shall proceed as though no*
26 *transfer of employment had occurred.*

27 (2) *Effective July 1, 2003, any presiding officer in the administrative*
28 *hearings section of all agencies specified in subsection (h)(2) which con-*
29 *duct hearings pursuant to the Kansas administrative procedure act, except*
30 *those exempted pursuant to K.S.A. 75-551 and amendments thereto, and*
31 *support personnel for such presiding officers, shall be transferred to and*
32 *shall become employees of the office of administrative hearings. Such per-*
33 *sonnel shall retain all rights under the state personnel system and retire-*
34 *ment benefits under the laws of this state which had accrued to or vested*
35 *in such personnel prior to the effective date of this section. Such person's*
36 *services shall be deemed to have been continuous. All transfers of person-*
37 *nel positions in the classified service under the Kansas civil service act*
38 *shall be in accordance with civil service laws and any rules and regula-*
39 *tions adopted thereunder. This section shall not affect any matter pending*
40 *before an administrative hearing officer at the time of the effective date*
41 *of the transfer, and such matter shall proceed as though no transfer of*
42 *employment had occurred.*

43 (3) *Effective July 1, 2004, any presiding officer in the administrative*

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

16 (4) Effective July 1, 2005, any presiding officer in the administrative
17 hearings section of all agencies specified in subsection (h)(4) which con-
18 duct hearings pursuant to the Kansas administrative procedure act, except
19 those exempted pursuant to K.S.A. 75-551 and amendments thereto, and
20 support personnel for such presiding officers, shall be transferred to and
21 shall become employees of the office of administrative hearings. Such per-
22 sonnel shall retain all rights under the state personnel system and retire-
23 ment benefits under the laws of this state which had accrued to or vested
24 in such personnel prior to the effective date of this section. Such person's
25 services shall be deemed to have been continuous. All transfers of person-
26 nel positions in the classified service under the Kansas civil service act
27 shall be in accordance with civil service laws and any rules and regula-
28 tions adopted thereunder. This section shall not affect any matter pending
29 before an administrative hearing officer at the time of the effective date
30 of the transfer, and such matter shall proceed as though no transfer of
31 employment had occurred.

32 Sec. 32. On and after July 1, 2006, K.S.A. 75-37,122 is hereby
33 amended to read as follows: 75-37,122. ~~On and after July 1, 1998:~~ (a)
34 There is hereby created a state advisory council for administrative hear-
35 ings. The advisory council shall consist of seven members appointed by
36 the governor. All members of the council shall serve at the pleasure of
37 the governor. Members of the council shall not receive compensation or
38 expense allowances for serving on the council.

39 (b) The council shall meet on call of the ~~secretary of administration~~
40 ~~director of the office of administrative hearings.~~

41 (c) The advisory council shall advise the ~~secretary of administration~~
42 ~~and the~~ director of the office of administrative hearings on policy matters
43 affecting the office of administrative hearings and on rules and regulations

1 adopted by the director.

2 Sec. 33. On and after July 1, 2002, K.S.A. 75-6207 is hereby
3 amended to read as follows: 75-6207. (a) If the director receives a timely
4 written request for a hearing under K.S.A. 75-6206 and amendments
5 thereto, the director shall request ~~the secretary of administration to ap-~~
6 ~~point~~ a presiding officer *from the office of administrative hearings* who
7 shall hold a hearing in accordance with the provisions of the Kansas ad-
8 ministrative procedure act to determine whether the debt claim is valid.
9 Subject to the provisions of subsection (b), the presiding officer shall
10 determine whether the claimed sum asserted as due and owing is correct,
11 and if not, shall order an adjustment to the debt claim which shall be
12 forwarded to the director and to the state agency, foreign state agency or
13 municipality to which the debt is owed. No issue may be considered at
14 the hearing which has been previously litigated and no collateral attack
15 on any judgment shall be permitted at the hearing. The order of the
16 presiding officer shall inform the debtor of the amount determined as
17 due, if any, and that setoff procedures have been ordered to proceed in
18 accordance with this act. If the setoff is to be made against earnings of
19 the debtor, the order shall include a statement that the setoff may be
20 postponed in accordance with K.S.A. 75-6208 and amendments thereto.
21 Orders under this section shall not be subject to administrative review.

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

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

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

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

42 Sec. 34. On and after July 1, 2002, K.S.A. 76-3110 is hereby
43 amended to read as follows: 76-3110. (a) The KPR board may initiate a

1 proceeding to effect termination of a postsecondary institution's partici-
2 pation in federal student aid programs by serving written notice upon the
3 institution that the board has determined that the institution should not
4 be eligible for participation in such programs. The notice shall include a
5 statement of the reasons for the determination and a statement that the
6 institution may contest the finding before a ~~hearing~~ *presiding* officer upon
7 written request filed with the KPR board. The request to be heard must
8 be filed within 15 days from the date of the notice of the board's deter-
9 mination. Upon receipt of a request by an institution to be heard, the
10 KPR board shall notify the secretary of human resources that the ap-
11 pointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after
12 receipt of notification from the KPR board, the secretary of human re-
13 sources shall ~~appoint~~ *request* a ~~hearing~~ *presiding* officer ~~from a list, which~~
14 ~~shall be compiled and maintained by the secretary of human resources,~~
15 ~~of impartial persons who are representative of the public and who are~~
16 ~~qualified to serve as hearing officers.~~

17 (b) Any hearing requested by a postsecondary institution as provided
18 in subsection (a) shall be commenced within 15 calendar days after the
19 ~~hearing~~ *presiding* officer is ~~appointed~~ *requested* and shall be conducted
20 in accordance with the provisions of the Kansas administrative procedure
21 act. Within 30 days after close of the hearing, the ~~hearing~~ *presiding* officer
22 shall render a written opinion setting forth the ~~hearing~~ *presiding* officer's
23 findings of fact and recommendation as to the determination of the mat-
24 ter. The opinion shall be submitted to the KPR board and to the postse-
25 condary institution. If, after receipt of the ~~hearing~~ *presiding* officer's opin-
26 ion, the KPR board concludes that the board's determination that the
27 institution should not be eligible for participation in federal student aid
28 programs was warranted, the board shall notify the institution and the
29 secretary of education of the determination and the reasons therefor.

30 Sec. 35. On and after July, 1, 2002, K.S.A. 77-505 is hereby amended
31 to read as follows: 77-505. Nothing in ~~this the Kansas administrative pro-~~
32 ~~cedure act shall preclude informal settlement of matters that may make~~
33 ~~unnecessary more elaborate proceedings under this act parties from set-~~
34 ~~tling a matter at any time. In addition, nothing in the Kansas adminis-~~
35 ~~trative procedure act shall preclude use of alternative dispute resolution,~~
36 ~~with consent of the agency and all parties.~~

37 Sec. 36. On and after July 1, 2002, K.S.A. 2001 Supp. 77-514 is
38 hereby amended to read as follows: 77-514. (a) *For agencies listed in*
39 *subsection (h) of K.S.A. 75-37,121, and amendments thereto,* the agency
40 head, one or more members of the agency head, ~~an administrative law~~
41 ~~judge or a presiding officer~~ assigned by the office of administrative hear-
42 ings, ~~or, unless prohibited by K.S.A. 77-551, and amendments thereto,~~
43 ~~one or more other persons designated by the agency head may shall be~~

1 the presiding officer. *For all other agencies, the agency head, one or more*
2 *members of the agency head, a presiding officer assigned by the office of*
3 *administrative hearings, or, unless prohibited by K.S.A. 77-551, and*
4 *amendments thereto, one or more other persons designated by the agency*
5 *head shall be the presiding officer.*

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

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

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

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

20 (f) If the office of administrative hearings cannot provide a presiding
21 officer, a state agency may enter into agreements with another state
22 agency to provide presiding officers to conduct proceedings under this
23 act.

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

29 (h) *Notwithstanding subsection (a) the agency head or one or more*
30 *members of the agency head who will serve as a presiding officer may*
31 *designate any other person to serve as a presiding officer to determine*
32 *procedural matters that may arise prior to the hearing on the merits,*
33 *including but not limited to, conducting prehearing conferences pursuant*
34 *to K.S.A. 77-516 and 77-517 and amendments thereto.*

35 Sec. 37. On and after July 1, 2006, K.S.A. 2001 Supp. 77-514, as
36 amended by section 36 of this act, is hereby amended to read as follows:
37 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37,121, and~~
38 ~~amendments thereto, The agency head, one or more members of the~~
39 ~~agency head or a presiding officer assigned by the office of administrative~~
40 ~~hearings shall be the presiding officer. For all other agencies, the agency~~
41 ~~head, one or more members of the agency head, a presiding officer as-~~
42 ~~signed by the office of administrative hearings, or, unless prohibited by~~
43 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~

1 ~~ignated by the agency head shall be the presiding officer.~~

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

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

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

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

16 (f) If the office of administrative hearings cannot provide a presiding
17 officer, a state agency may enter into agreements with another state
18 agency to provide presiding officers to conduct proceedings under this
19 act.

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

25 Sec. 38. On and after July 1, 2003, K.S.A. 77-549 is hereby amended
26 to read as follows: 77-549. (a) The filing of a return with the director of
27 taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of
28 the Kansas Statutes Annotated, and amendments thereto, shall not be
29 deemed an application for an order under the Kansas administrative pro-
30 cedure act.

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

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

43 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,

1 and amendments thereto, shall be rendered in writing and served within
2 120 days after conclusion of the hearing or after submission of proposed
3 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-
4 ments thereto, unless this period is waived or extended with the written
5 consent of all parties or for good cause shown. If extended for good cause,
6 such good cause shall be set forth in writing on or before the expiration
7 of the 120 days.

8 Sec. 39. On and after July 1, 2003, K.S.A. 77-550 is hereby amended
9 to read as follows: 77-550. For purposes of administrative proceedings of
10 the division of property valuation under the Kansas administrative pro-
11 cedure act, the secretary of revenue may designate the director of the
12 division of property valuation or ~~other designee~~ *a presiding officer from*
13 *the office of administrative hearings* as agency head.

14 Sec. 40. On and after July 1, 2002, K.S.A. 77-551 is hereby amended
15 to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) *Except as pro-*
16 *vided in subsection (b), in all hearings of the department of social and*
17 ~~rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,~~
18 ~~75-3306 and 75-3340, and amendments thereto,~~ *any state agency speci-*
19 *fied in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that*
20 *are required to be conducted in accordance with the provisions of the*
21 *Kansas administrative procedure act, the presiding officer shall be the*
22 *agency head, one or more members of the agency head or an adminis-*
23 ~~trative law judge~~ *a presiding officer assigned by the office of administra-*
24 *tive hearings.*

25 (b) *The provisions of this section shall not apply to: (1) The employ-*
26 *ment security law, pursuant to K.S.A. 44-701 et seq., and amendments*
27 *thereto; article 5 of chapter 44 of Kansas Statutes Annotated and amend-*
28 *ments thereto, except K.S.A. 44-532 and 44-5,120 and amendments*
29 *thereto, concerning the workers compensation act; or (3) water transfer*
30 *hearing panels, pursuant to K.S.A. 82a-1501a et seq., and amendments*
31 *thereto.*

32 (c) *Notwithstanding subsection (a) the agency head or one or more*
33 *members of the agency head who will serve as a presiding officer may*
34 *designate any other person to serve as a presiding officer to determine*
35 *procedural matters that may arise prior to the hearing on the merits,*
36 *including but not limited to conducting prehearing conferences pursuant*
37 *to K.S.A. 77-516 and 77-517, and amendments thereto.*

38 (d) This section shall be part of and supplemental to the Kansas ad-
39 ministrative procedure act.

40 Sec. 41. On and after July 1, 2006, K.S.A. 77-551, as amended by
41 section 40 of this act, is hereby amended to read as follows: 77-551. (a)
42 Except as provided in subsection (b), in all hearings of any state agency
43 ~~specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~

1 that are required to be conducted in accordance with the provisions of
2 the Kansas administrative procedure act, the presiding officer shall be the
3 agency head, one or more members of the agency head or a presiding
4 officer assigned by the office of administrative hearings.

5 (b) The provisions of this section shall not apply to: (1) The employ-
6 ment security law, pursuant to K.S.A. 44-701 *et seq.*, and amendments
7 thereto; article 5 of chapter 44 of Kansas Statutes Annotated, and amend-
8 ments thereto, except K.S.A. 44-532 and 44-5,120 and amendments
9 thereto, concerning the workers compensation act; or (3) water transfer
10 hearing panels, pursuant to K.S.A. 82a-1501a *et seq.*, and amendments
11 thereto.

12 (c) Notwithstanding subsection (a) the agency head or one or more
13 members of the agency head who will serve as a presiding officer may
14 designate any other person to serve as a presiding officer to determine
15 procedural matters that may arise prior to the hearing on the merits,
16 including but not limited to conducting prehearing conferences pursuant
17 to K.S.A. 77-516 and 77-517, and amendments thereto.

18 (d) This section shall be part of and supplemental to the Kansas ad-
19 ministrative procedure act.

20 Sec. 42. On and after July 1, 2003, K.S.A. 79-3313 is hereby
21 amended to read as follows: 79-3313. All cigarettes sold in this state shall
22 be in packages, and each of the packages shall bear evidence of payment
23 of the tax thereon except that any railroad or sleeping car company li-
24 censed as a retailer is hereby authorized to sell cigarettes upon its cars
25 without affixing stamps to the packages of cigarettes provided that
26 monthly reports and payment of the tax due is made directly to the di-
27 rector in the manner and under the terms provided for by the director.
28 In addition, manufacturers are hereby authorized to distribute in the
29 state, through their authorized representatives or wholesale dealers, free
30 sample packages of cigarettes containing less than 20 cigarettes without
31 affixing stamps to the packages provided that monthly reports and pay-
32 ment of a tax at the rates prescribed by law are made directly to the
33 director. No wholesale dealer or manufacturers' authorized representa-
34 tives shall sell or distribute cigarettes, except free sample packages, to
35 any person in the state of Kansas not holding a dealer's license as provided
36 in this act. Such packages of sample cigarettes shall bear the word "sam-
37 ple" or "not for sale" and "state tax paid" in letters easily read.

38 Whenever the director shall have reason to believe that any manufac-
39 turer has violated the provisions of this section or the conditions provided
40 by the director, the director shall conduct a hearing thereon in accordance
41 with the provisions of the Kansas administrative procedure act ~~in the~~
42 ~~office of the director at Topeka.~~ If upon the basis of such hearing it
43 appears to the satisfaction of the director that such manufacturer has

1 violated any of the provisions of this section or the conditions provided
2 by the director, the director is hereby authorized to suspend or revoke
3 the authorization to the manufacturer for such period as the director
4 determines is necessary but in no case for more than one year.

5 Sec. 43. On and after July 1, 2005, K.S.A. 82a-1405 is hereby
6 amended to read as follows: 82a-1405. (a) At the direction of the authority,
7 the director may issue licenses for weather modification activities, as pro-
8 vided for in this act, but any licensee shall be limited in the exercise of
9 activities under the license to the specified method or methods of weather
10 modification activity within the area of expertise of the licensee.

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

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

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

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

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

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

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

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

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

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

41 (3) the protection of life, health, property and the general
42 environment.

43 (e) Subject to any limitations imposed by law, to further the purposes

1 of this act, the authority may utilize available funds from the state and
2 may accept federal grants, private gifts and donations from any source.
3 Except as otherwise provided by law, the authority may use any such
4 moneys:

5 (1) For the administration of this act;

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

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

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

15 Sec. 44. On and after July 1, 2002, K.S.A. 21-3110, 44-1005, 75-
16 5611a, 75-6207, 76-3110, 77-505 and 77-551 and K.S.A. 2001 Supp. 75-
17 37,121 and 77-514 are hereby repealed.

18 Sec. 45. On and after July 1, 2003, K.S.A. 8-2426, 77-549, 77-550
19 and 79-3313 are hereby repealed.

20 Sec. 46. On and after July 1, 2004, K.S.A. 36-509, 65-163a, 65-673,
21 65-2305, 65-3483, 65-3488 and 65-3490 and K.S.A. 2001 Supp. 65-163,
22 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and 74-8837 are
23 hereby repealed.

24 Sec. 47. On and after July 1, 2005, K.S.A. 2-1208a, 2-3311, 44-322a,
25 49-606, 82a-1405 and K.S.A. 2001 Supp. 66-1,117 are hereby repealed.

26 Sec. 48. On and after July 1, 2006, K.S.A. 31-140, 40-2,137, 75-
27 37,122 and K.S.A. 77-551, as amended by section 40 of this act, and K.S.A.
28 2001 Supp. 77-514, as amended by section 36 of this act, are hereby
29 repealed.

30 Sec. 49. This act shall take effect and be in force from and after its
31 publication in the statute book.

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