

**ARTICLE 5.--ADMINISTRATIVE PROCEDURE ACT
GENERAL PROVISIONS**

1 **77-501. Title.**

2

3 K.S.A. 77-501 through ~~77-541~~ 77-566 shall be known and may be cited as the Kansas

4 administrative procedure act.

5 History: L. 1984, ch. 313, § 1; July 1, 1985.

6 Comment

7 This technical amendment reflects the addition of various new sections to KAPA since
8 the Act was originally enacted in 1984.

1 **77-502. Definitions.**

2 As used in this act:

3 (a) "State agency" means any officer, department, bureau, division, board, authority, agency,
4 commission or institution of this state, except the judicial and legislative branches of state
5 government and political subdivisions of the state, which is authorized by law to administer,
6 enforce or interpret any law of this state.

7 (b) "Agency head" means an individual or body of individuals in whom the ultimate legal
8 authority of the state agency is vested by any provision of law.

9 (c) "License" means a franchise, permit, certification, approval, registration, charter or similar
10 form of authorization required by law for a person to engage in a profession or occupation.

11 (d) "Order" means a state agency action of particular applicability that determines the legal
12 rights, duties, privileges, immunities or other legal interest of one or more specific persons.

13 (e) "Party to state agency proceedings," or "party" in context so indicating, means:

14 (1) A person to whom an order is specifically directed; or

15 (2) a person named as a party to a state agency proceeding or allowed to intervene as a party in
16 the proceeding.

17 (f) "Person" means an individual, partnership, corporation, association, political subdivision or
18 unit thereof or public or private organization or entity of any character, and includes another
19 state agency.

20 (g) "Political subdivision" means political or taxing subdivisions of the state, including boards,

December 9, 2008

1 commissions, authorities, councils, committees, subcommittees and other subordinate groups or
2 administrative units thereof, receiving or expending and supported in whole or in part by public
3 funds.

4 History: L. 1984, ch. 313, § 2; L. 1988, ch. 356, § 1; July 1, 1989.

1 **77-503. Application and construction.**

2 (a) This act applies only to the extent that other statutes expressly provide that the provisions of
3 this act govern proceedings under those statutes.

4 (b) This act creates only procedural rights and imposes only procedural duties. They are in
5 addition to those created and imposed by other statutes.

6 (c) In computing any period of time prescribed by this Act, the day of the act, event, or default
7 from which the designated period of time begins to run shall not be included. The last day of the
8 period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which
9 event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal
10 holiday. As used in this act, unless otherwise specified, “day” means calendar day and not
11 business day; therefore, intermediate Saturdays, Sundays and legal holidays shall be included in
12 the computation. As used in this act, “business day” means any day that is not a Saturday,
13 Sunday or legal holiday. “Legal holiday” includes any day designated as a holiday by any
14 statute or regulation of this state.

15 History: L. 1984, ch. 313, § 3; July 1, 1985.

16 Comment

17 New subsection (c) is intended to clarify that, when a time requirement under KAPA is
18 expressed in days, all days must be counted including intervening Saturdays, Sundays and legal

December 9, 2008

1 holidays, unless the statute specifically provides otherwise. Those portions of new subsection
2 (c) relating to the first and last days of any counting period are based on K.S.A. 60-206(a).
3 However, K.S.A. 60-206(a) was not adopted in its entirety.

4

1 **77-503a. [New section].**

2 In any proceeding under this Act, the presiding officer may provide for the omission from any
3 required notice or order or otherwise keep out of the public record the name, address, or other
4 contact information of alleged victims of crime, abuse, domestic violence, or sexual assault when
5 it is alleged in an affidavit or a pleading under oath that the health, safety, or liberty of such a
6 person would be jeopardized by disclosure of that information. In such cases, notice or service
7 to such persons shall be made through the presiding officer.

8 Comment

9 The Advisory Committee recommends the addition of a new section to KAPA to protect
10 the names, addresses and other contact information of alleged victims of crime, abuse, domestic
11 violence or sexual assault. The Committee also recommends a related amendment to K.S.A. 45-
12 221(a) of the Open Records Act to provide that agencies are not required to disclose such
13 information pursuant to an Open Records request.

1 **77-504. Waiver.**

2 Except to the extent precluded by another provision of law, a person may waive any right
3 conferred upon that person by this act.

4 History: L. 1984, ch. 313, § 4; July 1, 1985.

1 **77-505. Informal settlements; alternative dispute resolution.**

2 Nothing in the Kansas administrative procedure act shall preclude parties from settling a matter
3 at any time. In addition, nothing in the Kansas administrative procedure act shall preclude use of
4 alternative dispute resolution, with consent of the agency and all parties.

5 History: L. 1984, ch. 313, § 5; L. 2004, ch. 145, § 37; July 1, 2005.

6

1 **77-506. Conversion of proceedings.**

2 (a) At any point in a state agency proceeding the presiding officer or other state agency official
3 responsible for the proceeding:

4 (1) May convert the proceeding to another type of state agency proceeding if the conversion is
5 appropriate, is in the public interest and does not substantially prejudice the rights of any party;
6 and

7 (2) if required by any provision of law, shall convert the proceeding to another type of state
8 agency proceeding.

9 (b) A conversion of a proceeding of one type to a proceeding of another type may be effected
10 only upon notice to all parties to the original proceeding.

11 (c) If the presiding officer or other state agency official responsible for the original proceeding
12 would not have authority over the new proceeding to which it is to be converted, that officer or
13 official, in accordance with state agency procedure, shall secure the appointment of a successor
14 to preside over or be responsible for the new proceeding.

15 (d) The record of the original state agency proceeding may be used in the new state agency
16 proceeding.

17 (e) After a proceeding is converted from one type to another, the presiding officer or other state
18 agency official responsible for the new proceeding shall:

19 (1) Give such additional notice to parties or other persons as is necessary to satisfy the
20 requirements pertaining to those proceedings;

December 9, 2008

- 1 (2) dispose of the matters involved without further proceedings if sufficient proceedings have
- 2 already been held to satisfy the requirements pertaining to the new proceedings; and
- 3 (3) conduct or cause to be conducted any additional proceedings necessary to satisfy the
- 4 requirements pertaining to those proceedings.
- 5 History: L. 1984, ch. 313, § 6; L. 1988, ch. 356, § 2; July 1, 1989.

1 ~~77-507. Effective date of act.~~

2 ~~This act shall take effect on July 1, 1985, and does not govern adjudicative proceedings pending~~
3 ~~on that date. Subject to K.S.A. 1985 Supp. 77-503, this act governs all state agency adjudicative~~
4 ~~proceedings commenced after that date. This act also governs state agency adjudicative~~
5 ~~proceedings conducted on a remand from a court or another state agency after the effective date~~
6 ~~of this act.~~

7 History: L. 1984, ch. 313, § 7; July 1, 1985.

8 Comment

9 The Advisory Committee recommends repeal of this section because it is no longer
10 needed.

1 ~~77-507a. Effective date of 1988 act.~~

2 ~~This act shall take effect on July 1, 1989, and does not govern adjudicative proceedings pending~~
3 ~~on that date. Subject to K.S.A. 77-503 and amendments thereto, this act governs all state agency~~
4 ~~adjudicative proceedings commenced after that date. This act also governs state agency~~
5 ~~adjudicative proceedings conducted on a remand from a court or another state agency after the~~
6 ~~effective date of this act.~~ —

7 History: L. 1988, ch. 356, § 360; July 1, 1989.

8 Comment

9 The Advisory Committee recommends repeal of this section because it is no longer
10 needed.

1 **77-508. Hearings, not required in certain circumstances.**

2 A hearing shall not be required for a decision:

3 (a) To issue or not to issue a complaint, summons or similar accusation; or

4 (b) to initiate or not to initiate an investigation, prosecution or other proceeding before the state
5 agency, another agency or a court.

6 History: L. 1984, ch. 313, § 8; L. 1988, ch. 356, § 3; L. 1989, ch. 283, § 1; July 1.

1 **77-511. Time limits for processing application for an order or a request for a hearing;**
2 **expiration of license, when.**

3 (a) Except to the extent that the time limits in this subsection are inconsistent with limits
4 established by another statute, a state agency shall process an application for an order on which a
5 statute provides for a hearing under this act as follows:

6 (1) Within 30 days after receipt of the application, the state agency shall acknowledge receipt
7 thereof and inform the applicant of the name, official title, mailing address and telephone
8 number of a state agency member or employee who may be contacted regarding the application.

9 As soon as practicable, the state agency shall notify the applicant of any apparent errors or
10 omissions. Failure to detect such errors or omissions does not preclude the state agency from
11 raising them at a later stage of the proceeding.

12 (2) When practicable, within 90 days after receipt of a completed application, the state agency
13 shall:

14 (A) Approve or deny the application, in whole or in part, on the basis of emergency or summary
15 proceedings, if those proceedings are available under this act for disposition of the matter; or

16 (B) commence a formal hearing or a conference hearing in accordance with this act.

17 (b) Except to the extent that the time limits in this subsection are inconsistent with limits
18 established by another statute, a state agency shall process a request for a hearing as follows:

19 (1) Within 30 days after receipt of the request, the state agency shall acknowledge receipt thereof
20 and if the state agency has not previously done so, the state agency shall notify the applicant of

1 the name, official title, mailing address and telephone number of a state agency member or
2 employee who may be contacted regarding the request; and

3 (2) when practicable, within 90 days after receipt of the request the state agency shall commence
4 a formal or conference hearing in accordance with this act unless a statute makes the granting of
5 a hearing discretionary with the state agency and the state agency determines not to conduct a
6 hearing.

7 (c) For purposes of this section, a hearing commences when the state agency or presiding officer
8 notifies a party that a prehearing conference or other stage of the hearing will be conducted.

9 (d) If a timely and sufficient application has been made for renewal of a license with reference to
10 any activity of a continuing nature, the existing license does not expire until the state agency has
11 taken final action upon the application for renewal or, if the state agency's action is unfavorable,
12 until the last day for seeking judicial review of the state agency's action or a later date fixed by
13 the reviewing court.

14 History: L. 1984, ch. 313, § 11; L. 1986, ch. 362, § 2; L. 1988, ch. 356, § 5; L. 1989, ch. 283, §
15 2; July 1.

16 Comment

17 The technical amendment in subsection (c) is intended to clarify that subsection (c)
18 applies to the commencement of a hearing, whether upon an application for order pursuant to
19 subsection (a) or upon a request for hearing pursuant to subsection (b), but not to other KAPA
20 hearings.

1 **77-512. Orders affecting licensure; requirements.**

2 (a) A state agency may not revoke, suspend, modify, annul, withdraw, refuse to renew, or amend
3 a license unless the state agency first gives notice and an opportunity for a hearing in accordance
4 with this act.

5 (b) Unless otherwise provided by law, the burden of proof for disputed issues of fact in
6 occupational or professional license disciplinary proceedings against an individual shall be by
7 clear and convincing evidence.

8 (c) This section does not preclude a state agency from apply to ~~(a) (1)~~ taking immediate action to
9 protect the public interest in accordance with K.S.A. 77-536, and amendments thereto, or ~~(b) (2)~~
10 adopting the adoption of rules and regulations, otherwise within the scope of its an agency's
11 authority, pertaining to a class of licensees, including rules and regulations affecting the existing
12 licenses of a class of licensees.

13 History: L. 1984, ch. 313, § 12; L. 1989, ch. 283, § 3; July 1.

14 Comment

15 The Advisory Committee recommends raising the burden of proof to “clear and
16 convincing evidence” for disputed issues of fact in occupational or professional licensing
17 disciplinary proceedings against an individual in order to provide greater protection for these
18 especially important interests. The amendment is narrowly drafted so that it applies only to
19 proceedings against an individual licensee and not business licensing proceedings. Also, if

1 another statute states a different burden of proof, that statute will control.

2
3 The clear and convincing evidence standard is met when the evidence shows that the
4 truth of the facts asserted is “highly probable.” *In re B.D.-Y.*, 286 Kan. ___, 187 P.3d 594 (2008).
5 The Advisory Committee believes this heightened standard is appropriate because occupational
6 and professional licenses represent a substantial investment of time, energy, and resources and
7 are a prerequisite to the individual’s pursuit of a chosen calling. These concerns have caused
8 some courts to hold that due process requires the application of the clear and convincing
9 standard of proof to the revocation of professional licenses, although these decisions appear to
10 represent the minority view and the Kansas Supreme Court does not appear to have resolved the
11 issue.

12 This higher standard of proof already applies in attorney disciplinary proceedings by
13 virtue of Supreme Court Rule 211(f). (2007 Kan. Ct. R. Annot. 304.) It may also apply to other
14 licenses as well. See *Lacy v. Kansas Dental Bd.*, 274 Kan. 1031, 1036, 58 P.3d 668, 673 (2002)
15 (application of clear and convincing evidence standard in case involving dentist’s license) and
16 Attorney General Opinion No. 95-54 (in professional license or registration disciplinary
17 proceedings, an agency should establish its claim by clear and convincing evidence). The
18 Committee believes that the law in Kansas regarding the appropriate standard of proof should be
19 clarified and that strong evidence of incompetence or misconduct should be presented before
20 disciplinary action is taken against such licenses. At the same time, the Committee believes that

1 similar concerns do not apply to initial applications for licenses or to other kinds of licenses that
2 fall under the broad definition in the Kansas Administrative Procedure Act.

3 The Advisory Committee acknowledges that the issue of what burden of proof should
4 apply to occupational and professional licensing disciplinary proceedings is a difficult one and
5 not without some disagreement among different agencies. The Committee considered the
6 alternative option of amending individual licensing statutes to change the burden of proof on a
7 case-by-case basis, instead of recommending an amendment that will apply to licensing
8 proceedings across the board. However, the Committee believes its recommended amendment is
9 a more workable solution.

10 The Committee's other recommended amendments to this section are mostly technical,
11 but one point is important to note. Under the provisions of subsection (c), the heightened burden
12 of proof does not apply to emergency proceedings.

13

1

FORMAL HEARINGS

2

77-513. Hearings, applicable procedures.

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When a statute provides for a hearing in accordance with this act, the hearing shall be governed

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by K.S.A. 77-513 through 77-532, and amendments thereto, except as otherwise provided by:

5

(a) A statute other than this act; or

6

(b) K.S.A. 77-533 through ~~77-541~~ 77-542, and amendments thereto.

7

History: L. 1984, ch. 313, § 13; L. 1986, ch. 362, § 3; L. 1988, ch. 356, § 6; L. 1989, ch. 283, §

8

4; July 1.

9

Comment

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The technical amendment in subsection (b) reflects the addition of a new section to

11

KAPA in 1990.

12

1 **77-514. Presiding officer.**

2 (a) For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto, the
3 agency head, one or more members of the agency head or a presiding officer assigned by the
4 office of administrative hearings shall be the presiding officer. For all other agencies, the agency
5 head, one or more members of the agency head, a presiding officer assigned by the office of
6 administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or
7 more other persons designated by the agency head shall be the presiding officer.

8 (b) Any person serving or designated to serve alone or with others as presiding officer is subject
9 to disqualification for administrative bias, prejudice or interest.

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

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

15 (e) If a substitute is required for a person who is disqualified or becomes unavailable for any
16 other reason, any action taken by a duly appointed substitute for a disqualified or unavailable
17 person is as effective as if taken by the latter.

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

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

5 (h) Except as otherwise provided by law, in any proceeding under this act, a person shall not be
6 eligible to act as presiding officer, and shall not provide confidential legal or technical advice to
7 a presiding officer in the proceeding, if that person:

8 (1) Has served in an investigatory or prosecutorial capacity in the proceeding or a proceeding
9 arising out of the same event or transaction; or

10 (2) is supervised or directed by a person who would be disqualified under paragraph (1).

11 History: L. 1984, ch. 313, § 14; L. 1995, ch. 175, § 2; L. 1997, ch. 182, § 92; L. 2004, ch. 145, §
12 38; July 1, 2005.

13
14 **NOTE:** Effective July 1, 2009, K.S.A. 77-514(a) will be amended as follows:

15 (a) For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto, The
16 agency head, one or more members of the agency head or a presiding officer assigned by the
17 office of administrative hearings shall be the presiding officer. For all other agencies, the agency
18 head, one or more members of the agency head, a presiding officer assigned by the office of
19 administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or

1 ~~more other persons designated by the agency head shall be the presiding officer.~~

2 L. 2004, Ch. 145, § 39.

3 Comment

4 New subsection (h) is a separation of functions provision that is intended to address the
5 troubling situation that arises when agency personnel who act in an investigatory or prosecutorial
6 capacity in a proceeding are also involved in the adjudication by the agency. The amendment
7 would prohibit a person who has participated in an investigatory or prosecutorial capacity in
8 connection with a proceeding, or who is supervised by such a person, from acting as presiding
9 officer or providing confidential legal or technical advice to a presiding officer in that
10 proceeding.

1 **77-515. Participation and representation.**

2 (a) Any party may participate in the hearing in person or, if the party is a corporation or other
3 artificial person, by a duly authorized representative.

4 (b) Whether or not participating in person, any party may be represented at the party's own
5 expense by counsel or, if permitted by law, other representative.

6 (c) A state agency may require a corporation or other artificial person to participate by counsel.

7 History: L. 1984, ch. 313, § 15; L. 1986, ch. 362, § 4; July 1.

1 **77-516. Prehearing conference; notice.**

2 The presiding officer designated to conduct the hearing may conduct a prehearing conference. If
3 the conference is conducted:

4 (a) The state agency may assign a presiding officer for the prehearing conference, exercising the
5 same discretion as is provided by K.S.A. 77-514 and amendments thereto concerning the
6 selection of a presiding officer for a hearing.

7 (b) The presiding officer for the prehearing conference shall set the time and place of the
8 conference and give reasonable notice to all parties and to all persons who have filed written
9 petitions to intervene in the matter.

10 (c) The notice shall include:

11 (1) The names and mailing addresses of all parties and other persons to whom notice is being
12 given by the presiding officer;

13 (2) the name, official title, mailing address and telephone number of any counsel or employee
14 who has been designated to appear for the state agency;

15 (3) the official file or other reference number, the name of the proceeding and a general
16 description of the subject matter;

17 (4) a statement of the time, place and nature of the prehearing conference;

18 (5) a statement of the legal authority and jurisdiction under which the prehearing conference and
19 the hearing are to be held;

20 (6) the name, official title, mailing address and telephone number of the presiding officer for the

1 prehearing conference;

2 (7) a statement that at the prehearing conference the proceeding, without further notice, may be
3 converted into a conference hearing or a summary proceeding for disposition of the matter as
4 provided by this act; and

5 (8) a statement that a party who fails to attend or participate in a prehearing conference, hearing
6 or other stage of an adjudicative proceeding may be held in default under this act.

7 (d) The notice may include any other matters that the presiding officer considers desirable to
8 expedite the proceedings.

9 History: L. 1984, ch. 313, § 16; L. 1988 ch. 356, § 7; July 1, 1989.

1 **77-517. Prehearing conference; procedure; prehearing order.**

2 (a) The presiding officer may conduct all or part of the prehearing conference by telephone or
3 other electronic means if each participant in the conference has an opportunity to participate in
4 the entire proceeding while it is taking place.

5 (b) The presiding officer shall conduct the prehearing conference, as may be appropriate, to deal
6 with such matters as conversion of the proceeding to another type, exploration of settlement
7 possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation
8 of the number of witnesses, objections to proffers of evidence, determination of the extent to
9 which direct evidence, rebuttal evidence, or cross-examination will be presented in written form,
10 and the extent to which telephone or other electronic means will be used as a substitute for
11 proceedings in person, order of presentation of evidence and cross-examination, rulings
12 regarding issuance of subpoenas, discovery orders and protective orders and such other matters
13 as will promote the orderly and prompt conduct of the hearing. The presiding officer shall issue a
14 prehearing order incorporating the matters determined at the prehearing conference.

15 (c) If a prehearing conference is not held, the presiding officer for the hearing may issue a
16 prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

17 History: L. 1984, ch. 313, § 17; July 1, 1985.

1 **77-518. Notice of hearing.**

2 (a) The presiding officer for the hearing shall set the time and place of the hearing and give
3 reasonable written notice at least 10 days prior to the hearing to all parties and to all persons who
4 have filed written petitions to intervene in the matter. Service of notices shall be made in
5 accordance with K.S.A. 77-531 and amendments thereto.

6 (b) The notice shall include a copy of any prehearing order rendered in the matter.

7 (c) To the extent not included in a prehearing order accompanying it, the notice shall include:

8 (1) The names and mailing addresses of all parties and other persons to whom notice is being
9 given by the presiding officer;

10 (2) the name, official title, mailing address and telephone number of any counsel or employee
11 who has been designated to appear for the state agency;

12 (3) the official file or other reference number, the name of the proceeding and a general
13 description of the subject matter;

14 (4) a statement of the time, place and nature of the hearing;

15 (5) a statement of the legal authority and jurisdiction under which the hearing is to be held;

16 (6) the name, official title, mailing address and telephone number of the presiding officer;

17 (7) a statement of the issues involved and, to the extent known to the presiding officer, of the
18 matters asserted by the parties; and

19 (8) a statement that a party who fails to attend or participate in a prehearing conference, hearing
20 or other stage of an adjudicative proceeding may be held in default under this act.

1 (d) The notice may include any other matters the presiding officer considers desirable to expedite
2 the proceedings.

3 (e) The state agency shall cause notice to be given to persons entitled to notice under any
4 provision of law who have not been given notice under subsection (a) by the presiding officer.

5 Notice under this subsection shall be given in the manner specified by such provision of law or,
6 if no such manner is specified, in a manner to be determined by the agency. If a person other

7 than the agency is directed to give notice under this subsection, the agency shall require that the
8 person furnish proof that the notice has been given. Notice under this subsection may include all

9 types of information provided in subsections (a) through (d) or may consist of a brief statement
10 indicating the subject matter, parties, time, place and nature of the hearing, manner in which

11 copies of the notice to the parties may be inspected and copied and name and telephone number
12 of the presiding officer.

13 History: L. 1984, ch. 313, § 18; L. 1988, ch. 356, § 8; L. 1997, ch. 182, § 93; July 1, 1998.

1 **77-519. Pleadings, motions, objections, briefs; service.**

2 (a) The presiding officer, at appropriate stages of the proceedings, shall give all parties full
3 opportunity to file pleadings, objections and motions, including, but not limited to, motions to
4 dismiss and motions for summary judgment.

5 (b) The presiding officer, at appropriate stages of the proceedings, may give all parties full
6 opportunity to file briefs, proposed findings of fact and conclusions of law and proposed initial
7 or final orders.

8 (c) A party shall serve copies of any filed item on all parties, by mail or any other means
9 prescribed by state agency rule and regulation or by the presiding officer.

10 History: L. 1984, ch. 313, § 19; L. 1986, ch. 362, § 5; L. 1995, ch. 175, § 3; July 1.

11 Comment

12 The amendment to subsection (c) allows a presiding officer to determine the manner of
13 service.

1 **77-520. Default.**

2 (a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of an
3 adjudicative proceeding, the presiding officer may serve upon all parties written notice of a
4 proposed default order, including a statement of the grounds.

5 (b) Within seven days after service of a proposed default order, the party against whom it was
6 issued may file a written motion requesting that the proposed default order be vacated and
7 stating the grounds relied upon. During the time within which a party may file a written motion
8 under this subsection, the presiding officer may adjourn the proceedings or conduct them without
9 the participation of the party against whom a proposed default order was issued, having due
10 regard for the interests of justice and the orderly and prompt conduct of the proceedings.

11 (c) The proposed default order shall become effective after expiration of the time within which
12 the party may file a written motion under subsection (b) unless a written motion to vacate the
13 order is filed with the agency within such time. Upon receipt of a motion to vacate a proposed
14 default order, the presiding officer shall either vacate the proposed order or issue the default
15 order as proposed. If the presiding officer issues a default order as proposed, the order shall
16 become effective upon service.

17 (d) After a default order becomes effective, the presiding officer shall conduct any further
18 proceedings necessary to complete the adjudication without the participation of the party in
19 default and shall determine all issues in the adjudication, including those affecting the defaulting
20 party. The presiding officer in lieu of determining the issues affecting the defaulting party may,

1 unless otherwise prohibited by law, dismiss such party's application for an adjudicative
2 proceeding.

3 (e) If the presiding officer is the agency head, or has been designated under K.S.A. 77-514 to
4 issue a final order, the order shall be deemed a final order. If the presiding officer is not the
5 agency head, and has not been designated to issue a final order under K.S.A. 77-514, the order
6 shall be deemed an initial order.

7 History: L. 1984, ch. 313, § 20; L. 1986, ch. 362, § 6; L. 1988, ch. 356, § 9; L. 1991, ch. 277, §
8 1; April 18.

9 Comment

10 New subsection (e) is intended as a clarification of whether a default order is an initial order
11 or a final order depending upon who issues it.

1 **77-521. Intervention.**

2 (a) The presiding officer shall grant a petition for intervention if:

3 (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties
4 named in the presiding officer's notice of the hearing, at least three business days before the hearing;

5 (2) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges,
6 immunities or other legal interests may be substantially affected by the proceeding or that the
7 petitioner qualifies as an intervener under any provision of law; and

8 (3) the presiding officer determines that the interests of justice and the orderly and prompt conduct
9 of the proceedings will not be impaired by allowing the intervention.

10 (b) The presiding officer may grant a petition for intervention at any time upon determining that the
11 intervention sought is in the interests of justice and will not impair the orderly and prompt conduct
12 of the proceedings.

13 (c) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the
14 intervener's participation in the proceedings, either at the time that intervention is granted or at any
15 subsequent time. Conditions may include:

16 (1) Limiting the intervener's participation to designated issues in which the intervener has a
17 particular interest demonstrated by the petition;

18 (2) limiting the intervener's use of discovery, cross-examination and other procedures so as to
19 promote the orderly and prompt conduct of the proceedings; and

20 (3) requiring two or more interveners to combine their presentations of evidence and argument,

1 cross-examination, discovery and other participation in the proceedings.

2 (d) The presiding officer, at least ~~24 hours~~ one business day before the hearing, shall issue an order
3 granting or denying each pending petition for intervention, specifying any conditions and briefly
4 stating the reasons for the order. The presiding officer may modify the order at any time, stating the
5 reasons for the modification. The presiding officer shall promptly give notice of an order granting,
6 denying or modifying intervention to the petitioner for intervention and to all parties.

7 History: L. 1984, ch. 313, § 21; July 1, 1985.

8 Comment

9 In general, time limits under KAPA which are expressed in days refer to calendar days rather
10 than business days. The amendments to this section create an exception to the general rule; the time
11 limits in this section should be counted as business days rather than calendar days. “Business day”
12 is defined at K.S.A. 77-503(c).

1 **77-522. Discovery; authorization; requests; subpoenas, discovery orders and protective orders.**

2

3 (a) Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the
4 parties. Requests for discovery shall be made in writing to the presiding officer and a copy of each
5 request for discovery shall be served on the party or person against whom discovery is sought. The
6 presiding officer may specify the times during which the parties may pursue discovery and respond
7 to discovery requests. The presiding officer may issue subpoenas, discovery orders and protective
8 orders in accordance with the rules of civil procedure.

9 (b) Subpoenas issued by the presiding officer may be served by a person designated by the presiding
10 officer or any other person who is not a party and is not less than 18 years of age or may be served
11 by certified mail, return receipt requested. Service shall be at the expense of the requesting party.
12 Proof of service shall be shown by affidavit.

13 (c) Subpoenas and orders issued by the presiding officer may be enforced pursuant to the provisions
14 of the act for judicial review and civil enforcement of agency actions.

15 History: L. 1984, ch. 313, § 22; L. 1988, ch. 356, § 10; L. 1989, ch. 283, § 5; L. 1995, ch. 175, § 4;
16 July 1.

1 **77-523. Hearing procedure.**

2 At a hearing:

3 (a) The presiding officer shall regulate the course of the proceedings.

4 (b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer
5 shall afford to all parties the opportunity to respond, present evidence and argument, conduct
6 cross-examination and submit rebuttal evidence, except as restricted by a limited grant of
7 intervention or by the prehearing order.

8 (c) The presiding officer may, and when required by statute shall, give nonparties an opportunity
9 to present oral or written statements. If the presiding officer proposes to consider a statement by a
10 nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on
11 motion of any party, the presiding officer shall require the statement to be given under oath or
12 affirmation.

13 (d) The presiding officer may conduct all or part of the hearing by telephone or other electronic
14 means, if each participant in the hearing has an opportunity to participate in the entire proceeding
15 while it is taking place.

16 (e) The presiding officer shall cause the hearing to be recorded at the state agency's expense. The
17 state agency is not required, at its expense, to prepare a transcript, unless required to do so by a
18 provision of law. Any party, at the party's expense and subject to such reasonable conditions as the
19 state agency may establish, may cause a person other than the state agency to prepare a transcript
20 from the state agency's record, or cause additional recordings to be made during the hearing.

December 9, 2008

1 (f) The hearing is open to public observation, except ~~for the parts that the~~ to the limited extent, as
2 determined by the presiding officer ~~states to be closed~~ , that it is necessary to close parts of the
3 hearing pursuant to a provision of law expressly authorizing closure or requiring confidentiality.
4 Notwithstanding any other provision of law, any hearing held pursuant to this act shall not be
5 deemed a meeting pursuant to K.S.A. 75-4317a.

6 History: L. 1984, ch. 313, § 23; L. 1988, ch. 356, § 11; July 1, 1989.

7 Comment

8 The amendments to subsection (f) are intended to clarify that a presiding officer may close
9 parts of a hearing pursuant to any statute which expressly authorizes closure or requires information
10 to be kept confidential. In addition, any hearing under KAPA is deemed not to be a meeting
11 pursuant to the Open Meetings Act.

1 **77-524. Evidence; official notice.**

2 (a) A presiding officer need not be bound by technical rules of evidence, but shall give the parties
3 reasonable opportunity to be heard and to present evidence, and the presiding officer shall act
4 reasonably without partiality. The presiding officer shall give effect to the rules of privilege
5 recognized by law. Evidence need not be excluded solely because it is hearsay.

6 (b) All testimony of parties and witnesses shall be made under oath or affirmation and the presiding
7 officer shall have the power to administer an oath or affirmation for that purpose.

8 (c) Statements presented by nonparties in accordance with paragraph (c) of K.S.A. 77-523 may be
9 received as evidence.

10 (d) Any part of the evidence may be received in written form if doing so will expedite the hearing
11 without substantial prejudice to the interests of any party.

12 (e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties
13 shall be given an opportunity to compare the copy with the original if available.

14 (f) Official notice may be taken of (1) any matter that could be judicially noticed in the courts of this
15 state, (2) the record of other proceedings before the state agency, (3) technical or scientific matters
16 within the state agency's specialized knowledge, and (4) codes of standards that have been adopted
17 by an agency of the United States, of this state or of another state or by a nationally recognized
18 organization or association. Parties shall be notified before or during the hearing, or before the
19 issuance of any initial or final order that is based in whole or in part on matters or material noticed,
20 of the specific matters or material noticed and the source thereof, including any staff memoranda

December 9, 2008

1 and data, and be afforded an opportunity to contest and rebut the matters or material so noticed.

2

3 History: L. 1984, ch. 313, § 24; July 1, 1985.

1 **77-525. Ex parte communications; exemption for certain agencies.**

2 (a) A presiding officer serving in an adjudicative proceeding may not communicate, directly or
3 indirectly, regarding any issue in the proceeding while the proceeding is pending, with any party or
4 participant, with any person who has a direct or indirect interest in the outcome of the proceeding
5 or with any person who has served in an investigatory or prosecutorial capacity or presided at a
6 previous stage of the proceeding, without notice and opportunity for all parties to participate in the
7 communication.

8 (b) A member of a multimember panel of presiding officers may communicate with other members
9 of the panel regarding a matter pending before the panel, and any presiding officer may receive aid
10 from staff assistants if the assistants do not:

11 (1) Receive ex parte communications of a type that the presiding officer would be prohibited from
12 receiving; or

13 (2) furnish, augment, diminish or modify the evidence in the record.

14 (c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party
15 to an adjudicative proceeding, and no person who has a direct or indirect interest in the outcome of
16 the proceeding or who presided at a previous stage of the proceeding, may directly or indirectly
17 communicate in connection with any issue in that proceeding, while the proceeding is pending, with
18 any person serving as presiding officer unless notice and an opportunity are given all parties to
19 participate in the communication.

20 (d) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte

1 communication of a type that could not properly be received while serving, the person, promptly
2 after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

3 (e) A presiding officer who receives an ex parte communication in violation of this section shall
4 place on the record of the pending matter all written communications received, all written responses
5 to the communications and a memorandum stating the substance of all oral communications
6 received, all responses made and the identity of each person from whom the presiding officer
7 received an ex parte communication and shall advise all parties that these matters have been placed
8 on the record. Any party desiring to rebut the ex parte communication must be allowed to do so,
9 upon requesting the opportunity for rebuttal within 10 days after notice of the communication.

10 (f) If necessary to eliminate the effect of an ex parte communication received in violation of this
11 section, a presiding officer who receives the communication may be disqualified and the portions
12 of the record pertaining to the communication may be sealed by protective order.

13 (g) The state agency shall, and any party may, report any willful violation of this section to
14 appropriate authorities for any disciplinary proceedings provided by law. In addition, each state
15 agency, by rule and regulation, may provide for appropriate sanctions, including default, for any
16 violations of this section.

17 (h) This section shall not apply to adjudicative proceedings before:

18 (1) The state corporation commission. Such proceedings shall be subject to the provisions of K.S.A.
19 77-545;

20 (2) the commissioner of insurance concerning any rate, or any rule, regulation or practice pertaining
21 to the rates over which the commissioner has jurisdiction or adjudicative proceedings held pursuant

December 9, 2008

1 to the Kansas insurance holding companies act. Such proceedings shall be subject to the provisions
2 of K.S.A. 77-546; and
3 (3) the director of taxation. Such proceedings shall be subject to the provisions of K.S.A. 77-548.
4 History: L. 1984, ch. 313, § 25; L. 1986, ch. 362, § 7; L. 1988, ch. 356, § 12; July 1, 1989.

5 Comment

6 The amendment in subsection (a) expands the prohibition on ex parte communications by
7 prohibiting intra-agency communication between presiding officers and investigatory or
8 prosecutorial personnel.

1 **77-526. Orders, initial and final; exception for state corporation commission.**

2 (a) If the presiding officer is the agency head or designated in accordance with subsection (g) of
3 K.S.A. 77-514, and amendments thereto, the presiding officer shall render a final order.

4 (b) If the presiding officer is neither the agency head nor designated in accordance with subsection
5 (g) of K.S.A. 77-514, and amendments thereto, the presiding officer shall render an initial order,
6 which becomes a final order unless reviewed in accordance with K.S.A. 77-527 and amendments
7 thereto.

8 (c) A final order or initial order shall include, separately stated, findings of fact, conclusions of law
9 and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects
10 of the order, including the remedy prescribed and, if applicable, the action taken on a petition for
11 stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition
12 or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit
13 statement of the underlying facts of record to support the findings. The order shall also include a
14 statement of the available procedures and time limits for seeking reconsideration, administrative
15 review or other administrative relief. An initial order shall include a statement of any circumstances
16 under which the initial order, without further notice, may become a final order. If the presiding
17 officer has been designated in accordance with subsection (g) of K.S.A. 77-514, and amendments
18 thereto, the final order shall so state. Any final order, for which a petition for reconsideration is not
19 a prerequisite for seeking judicial review, and any initial order, for which further administrative
20 review is not available, shall state the agency officer to receive service of a petition for judicial

1 review on behalf of the agency.

2 (d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative
3 proceeding and on matters officially noticed in that proceeding.

4 (e) If a substitute presiding officer is appointed pursuant to K.S.A. 77-514 and amendments thereto,
5 the substitute presiding officer shall use any existing record and may conduct any further
6 proceedings appropriate in the interests of justice.

7 (f) The presiding officer may allow the parties a designated amount of time after conclusion of the
8 hearing for the submission of proposed findings.

9 (g) A final order or initial order pursuant to this section shall be rendered in writing and served
10 within 30 days after conclusion of the hearing or after submission of proposed findings in
11 accordance with subsection (f) unless this period is waived or extended with the written consent of
12 all parties or for good cause shown. If extended for good cause, such good cause shall be set forth
13 in writing on or before expiration of the 30 days.

14 (h) The presiding officer shall cause copies of the order to be served on each party and, if the order
15 is an initial order, on the agency head in the manner prescribed by K.S.A. 77-531 and amendments
16 thereto.

17 (I) Notwithstanding the other provisions of this section, if the presiding officer in a hearing before
18 the state corporation commission is not the agency head, the presiding officer shall not render an
19 initial order but shall make written findings and recommendations to the commission. The
20 commission shall render and serve a final order within 60 days after conclusion of the hearing or
21 after submission of proposed findings in accordance with subsection (f) unless this period is waived

December 9, 2008

1 or extended with the written consent of all parties or for good cause shown. If extended for good

2 cause, such good cause shall be set forth in writing on or before expiration of the 60 days.

3 History: L. 1984, ch. 313, § 26; L. 1988, ch. 356, § 13; L. 1995, ch. 175, § 5; July 1.

1 **77-527. Review of initial order; exceptions to reviewability.**

2 (a) The agency head, upon its own motion may, and upon petition by any party or when required by
3 law shall, review an initial order, except to the extent that:

- 4 (1) A provision of law precludes or limits state agency review of the initial order; or
5 (2) the agency head (A) determines to review some but not all issues, or not to exercise any review,
6 (B) delegates its authority to review the initial order to one or more persons, unless such delegation
7 is expressly prohibited by law, or (C) authorizes one or more persons to review the initial order,
8 subject to further review by the agency head.

9 (b) A petition for review of an initial order must be filed with the agency head, or with any person
10 designated for this purpose by rule and regulation of the state agency, within 15 days after service
11 of the initial order. If the agency head on its own motion decides to review an initial order, the
12 agency head shall give written notice of its intention to review the initial order within 15 days after
13 its service. If the agency head determines not to review an initial order in response to a petition for
14 review, the agency head shall, within 20 days after filing of the petition for review, serve on each
15 party an order stating that review will not be exercised.

16 (c) The petition for review shall state its basis. If the agency head on its own motion gives notice of
17 its intent to review an initial order, the agency head shall identify the issues that it intends to review.

18 (d) Subject to K.S.A. 77-621 and amendments thereto, in reviewing an initial order, the agency head
19 or designee shall exercise all the decision-making power that the agency head or designee would
20 have had to render a final order had the agency head or designee presided over the hearing, except

1 to the extent that the issues subject to review are limited by a provision of law or by the agency head
2 or designee upon notice to all parties. In reviewing findings of fact in initial orders by presiding
3 officers, the agency head shall give due regard to the presiding officer's opportunity to observe the
4 witnesses. The agency head shall consider the agency record or such portions of it as have been
5 designated by the parties.

6 (e) The agency head or designee shall afford each party an opportunity to present briefs and may
7 afford each party an opportunity to present oral argument.

8 (f) The agency head or designee shall render a final order disposing of the proceeding or remand the
9 matter for further proceedings with instructions to the person who rendered the initial order. Upon
10 remanding a matter, the agency head or designee may order such temporary relief as is authorized
11 and appropriate.

12 (g) A final order or an order remanding the matter for further proceedings shall be rendered in
13 writing and served within 30 days after receipt of briefs and oral argument unless that period is
14 waived or extended with the written consent of all parties or for good cause shown.

15 (h) A final order or an order remanding the matter for further proceedings under this section shall
16 identify any difference between this order and the initial order and shall state the facts of record
17 which support any difference in findings of fact, state the source of law which supports any
18 difference in legal conclusions, and state the policy reasons which support any difference in the
19 exercise of discretion. A final order under this section shall include, or incorporate by express
20 reference to the initial order, all the matters required by subsection (c) of K.S.A. 77-526, and
21 amendments thereto.

1 (I) The agency head shall cause copies of the final order or order remanding the matter for further
2 proceedings to be served on each party in the manner prescribed by K.S.A. 77-531, and amendments
3 thereto.

4 (j) Unless a petition for reconsideration is a prerequisite for seeking judicial review, a final order
5 under this section shall state the agency officer to receive service of a petition for judicial review
6 on behalf of the agency.

7 History: L. 1984, ch. 313, § 27; L. 1988, ch. 356, § 14; L. 1995, ch. 175, § 6; L. 1997, ch. 182, § 94;
8 July 1, 1998.

9 Comment

10 The amendment to subsection (d) deals with agency review of a presiding officer's initial
11 order. The amendment requires an agency head, in reviewing findings of fact by a presiding officer,
12 to give due regard to the presiding officer's credibility determinations. The language of this
13 amendment was taken from the draft Revised Model State Administrative Procedure Act, which the
14 Advisory Committee believes strikes an appropriate balance between protecting the independent fact
15 findings of a hearing officer and preserving the agency's policy-making role.

1 **77-528. Stay.**

2 Until the time at which a petition for judicial review would no longer be timely, a party may submit
3 to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order
4 ~~until the time at which a petition for judicial review would no longer be timely,~~ unless otherwise
5 provided by statute or stated in the initial or final order. The presiding officer or agency head may
6 take action on the petition for stay, either before or after the effective date of the initial or final
7 order.

8 History: L. 1984, ch. 313, § 28; July 1, 1985.

9 Comment

10 The technical amendment is intended to make this section read more clearly.

1 **77-529. Reconsideration.**

2 (a) (1) Except as otherwise provided by paragraph (2), any party, within 15 days after service of a
3 final order, may file a petition for reconsideration with the agency head, stating the specific grounds
4 upon which relief is requested. The filing of the petition is not a prerequisite for seeking
5 administrative or judicial review except as provided in K.S.A. 44-1010 and 44-1115, and
6 amendments thereto, concerning orders of the Kansas human rights commission, K.S.A. 55-606 and
7 66-118b, and amendments thereto, concerning orders of the corporation commission and K.S.A.
8 74-2426, and amendments thereto, concerning orders of the state court of tax appeals.

9 (2) Any party applying for an exemption under: (A) Section 13, of article 11 of the Kansas
10 Constitution, or (B) K.S.A. 79-201a Second, and amendments thereto, for property constructed or
11 purchased, in whole or in part, with the proceeds of revenue bonds under the authority of K.S.A.
12 12-1740 to 12-1749, inclusive, and amendments thereto, may file a petition for reconsideration with
13 the state court of tax appeals within 30 days after service of a final order.

14 (b) Within 20 days after the filing of the petition, the agency head shall render a written order
15 denying the petition, granting the petition and dissolving or modifying the final order, or granting
16 the petition and setting the matter for further proceedings. ~~The petition may be granted, in whole or~~
17 ~~in part, only if the agency head states, in the written order, An order on reconsideration altering a~~
18 ~~prior order shall be in writing and shall include~~ findings of fact, conclusions of law and policy
19 reasons for the decision ~~if it is an exercise of the state agency's discretion, to justify the order.~~ In
20 proceedings before the Kansas corporation commission, the petition is deemed to have been denied

1 if the agency head does not dispose of it within 30 days after the filing of the petition.

2 An order under this section shall be served on the parties in the manner prescribed by K.S.A. 77-531
3 and amendments thereto.

4 (c) If there are multiple parties to an agency adjudication and one party files a petition for judicial
5 review, the agency retains jurisdiction to act on a timely petition for reconsideration filed by another
6 party.

7 (c d) Any order rendered upon reconsideration or any order denying a petition for reconsideration
8 shall state the agency officer to receive service of a petition for judicial review on behalf of the
9 agency.

10 (d e) For the purposes of this section, "agency head" shall include a presiding officer designated in
11 accordance with subsection (g) of K.S.A. 77-514, and amendments thereto.

12 History: L. 1984, ch. 313, § 29; L. 1988, ch. 356, § 15; L. 1991, ch. 148, § 11; L. 1995, ch. 175, §
13 7; L. 1997, ch. 132, § 4; L. 1998, ch. 146, § 4; July 1.

14 Comment

15 The amendment to subsection (b) is intended to clarify that findings of fact and conclusions
16 of law are required in an order on reconsideration that alters a prior order, but not in an order that
17 merely states the prior order will be reconsidered.

18 New subsection (c) clarifies, when there are multiple parties to a proceeding and one party
19 has filed a petition for judicial review, the agency retains jurisdiction to consider a petition for
20 reconsideration filed by another party to the proceeding, so long as it is timely filed.

1 **77-530. Orders, when effective.**

2 (a) Unless a later date is stated in a final order or a stay is granted, a final order is effective upon
3 service.

4 (b) Unless a later date is stated in an initial order or a stay is granted, an initial order shall become
5 effective and shall become the final order: (1) When the initial order is served, if administrative
6 review is unavailable; (2) when the agency head serves an order stating, after a petition for review
7 has been filed, that review will not be exercised; or (3) 30 days after service if no party has filed a
8 petition for review by the agency head, the agency head has not given written notice of its intention
9 to exercise review and review by the agency head is not otherwise required by law.

10 (c) This section does not preclude a state agency from taking immediate action to protect the public
11 interest in accordance with K.S.A. 77-536 and amendments thereto.

12 History: L. 1984, ch. 313, § 30; L. 1988, ch. 356, § 16; July 1, 1989.

1 **77-531. Service of order.**

2 Service of an order or notice shall be made upon the party and the party's attorney of record, if any,
3 by delivering a copy of the order or notice to the person to be served or by mailing a copy of the
4 order or notice to the person at the person's last known address. Service shall be presumed if the
5 presiding officer, or a person directed to make service by the presiding officer, makes a written
6 certificate of service. Delivery of a copy of an order or notice means handing the order or notice to
7 the person or leaving the order or notice at the person's principal place of business or residence with
8 a person of suitable age and discretion who works or resides therein. ~~Service shall be presumed if~~
9 ~~the presiding officer, or a person directed to make service by the presiding officer, makes a written~~
10 ~~certificate of service.~~ Service by mail is complete upon mailing. Whenever a party has the right or
11 is required to do some act or take some proceedings within a prescribed period after service of a
12 notice or order and the notice or order is served by mail, three days shall be added to the prescribed
13 period.

14 History: L. 1984, ch. 313, § 31; July 1, 1985.

15 Comment

16 The technical amendment is intended to make this section read more clearly.

1 **77-532. Record.**

2 (a) A state agency shall maintain an official record of each formal hearing.

3 (b) The state agency record consists only of:

4 (1) Notices of all proceedings;

5 (2) any prehearing order;

6 (3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

7 (4) evidence received or considered;

8 (5) a statement of matters officially noticed;

9 (6) proffers of proof and objections and rulings thereon;

10 (7) proposed findings, requested orders and exceptions;

11 (8) the record prepared for the presiding officer at the hearing, together with any transcript of all or
12 part of the hearing considered before final disposition of the proceeding;

13 (9) any final order, initial order, or order on reconsideration; ~~and~~

14 (10) staff memoranda or data submitted to the presiding officer other than confidential internal
15 communications permitted under K.S.A. 77-525; and

16 (11) any oral or written statement allowed by the presiding officer pursuant to K.S.A. 77-523(c).

17 (c) Except to the extent that this act or another statute provides otherwise, the state agency record,
18 excluding matters under paragraph (10) of subsection (b), constitutes the exclusive basis for state
19 agency action in formal hearings and for judicial review thereof.

20 History: L. 1984, ch. 313, § 32; L. 1988, ch. 356, § 17; July 1, 1989.

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Comment

The amendments to this section clarify that confidential internal communications permitted under K.S.A. 77-525 are not part of the state agency record, while oral or written statements allowed by a presiding officer pursuant to K.S.A. 77-523(c) are part of the state agency record.

1

CONFERENCE HEARING

2

77-533. Conference hearing; use, when.

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A conference hearing may be used if its use in the circumstances does not violate any provision

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of law and where there is:

5

(a) A matter in which there is no disputed issue of material fact; or

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(b) a matter in which there is a disputed issue of material fact and the parties agree to a

7

conference hearing.

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History: L. 1984, ch. 313, § 33; L. 1988, ch. 356, § 18; July 1, 1989.

1 **77-534. Procedure.**

2 The procedures of this act pertaining to formal hearings apply to a conference hearing, except to
3 the following extent:

4 (a) ~~If a matter is initiated as a conference hearing, no prehearing conference may be held.~~

5 (b) The provisions of K.S.A. 77-522 and amendments thereto do not apply to conference
6 hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and
7 discovery orders, but do apply to conference hearings insofar as those provisions authorize the
8 presiding officer to issue protective orders at the request of any party or upon the presiding
9 officer's motion.

10 (c) (b) Paragraphs (a), (b) and (c) of K.S.A. 77-523 and amendments thereto do not apply; but (1)
11 the presiding officer shall regulate the course of the proceedings; (2) only the parties may testify
12 and present written exhibits; and (3) the parties may offer comments on the issues.

13 History: L. 1984, ch. 313, § 34; L. 1988, ch. 356, § 19; July 1, 1989.

14 Comment

15 Although a prehearing conference may be rarely needed before a conference hearing, the
16 Advisory Committee believes there is no justification for a blanket prohibition on prehearing
17 conferences in this context.

1 **77-535. Disclosure of material or essential facts.**

2 (a) If during a conference hearing the presiding officer has reason to believe that material facts
3 are in dispute, the presiding officer may require any party to state the identity of the witnesses or
4 other sources through whom the party would propose to present proof if the proceeding were
5 converted to a formal hearing, but if disclosure of any fact, allegation or source is privileged or
6 expressly prohibited by any provision of law, the presiding officer may require the party to
7 indicate that confidential facts, allegations or sources are involved, but not to disclose the
8 confidential facts, allegations or sources.

9 (b) If during a conference hearing a party has reason to believe that essential facts must be
10 obtained in order to permit an adequate presentation of the case, the party may inform the
11 presiding officer regarding the general nature of the facts and the sources from whom the party
12 would propose to obtain those facts if the proceeding were converted to a formal hearing.

13 History: L. 1984, ch. 313, § 35; L. 1988, ch. 356, § 20; July 1, 1989.

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EMERGENCY PROCEEDINGS

77-536. Emergency proceedings; use, when; procedure.

(a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.

(b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

(c) The state agency shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the state agency's decision to take the specific action and the determination of: (1) An immediate danger or (2) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(d) The state agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(e) After issuing an order pursuant to this section, the state agency shall proceed as quickly as

1 feasible to complete any proceedings that would be required if the matter did not justify the use
2 of emergency proceedings under subsection (a).

3 (f) The state agency record consists of any documents regarding the matter that were considered
4 or prepared by the state agency. The state agency shall maintain these documents as its official
5 record.

6 (g) Unless otherwise required by a provision of law, the state agency record need not constitute
7 the exclusive basis for state agency action in emergency proceedings or for judicial review
8 thereof.

9 History: L. 1984, ch. 313, § 36; L. 1988, ch. 356, § 21; July 1, 1989.

SUMMARY PROCEEDINGS

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77-537. Summary proceedings; use, when; right to request hearing; orders, contents.

(a) A state agency may use summary proceedings, subject to a party's request for a hearing on the order, if:

- (1) The use of those proceedings in the circumstances does not violate any provision of law; and
- (2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties.

(b) The state agency shall serve each party with a copy of the order in a summary proceeding in the manner prescribed by K.S.A. 77-531, and amendments thereto. The order shall include at least:

- (1) A statement of the state agency's action and, if unfavorable action is taken, a brief statement of the reasons for the action;
- (2) notice of the time and manner for requesting a hearing on the order, as provided in K.S.A. 77-542; and
- (3) notice that, if a hearing is not requested, the order shall become effective upon the expiration of the time for requesting a hearing.

(c) If a hearing is requested, the prior issuance of a summary order shall not affect the burden of proof.

History: L. 1984, ch. 313, § 37; L. 1988, ch. 356, § 22; L. 1989, ch. 283, § 6; L. 1990, ch. 340, §

1 1; July 1.

2 Comment

3 This amendment is intended to clarify that, when an agency enters a summary order and
4 one of the parties requests a hearing, the burden of proof does not shift to the party requesting
5 the hearing to prove that the summary order was entered in error. If a hearing is requested, the
6 burden of proof remains with the party who sought the summary order in the first instance.

1 **77-541. Same; record.**

2 (a) The state agency record for a summary proceeding consists of any documents regarding the
3 matter that were considered or prepared by the state agency. The state agency shall maintain
4 these documents as its official record.

5 (b) Unless otherwise required by a provision of law, the agency record need not constitute the
6 exclusive basis for agency action in summary proceedings or for judicial review thereof.

7 History: L. 1984, ch. 313, § 41; L. 1988, ch. 356, § 26; L. 1989, ch. 283, § 7; July 1.

1 **77-542. Right to request hearing; statement filed.**

2 (a) Any notice of agency action resulting in a right to request a hearing pursuant to the Kansas
3 administrative procedure act must include a statement informing the person that a written request
4 for a hearing must be filed with the agency within 15 days of service of the notice.

5 (b) The time limit for requesting a hearing established by subsection (a) may be lengthened or
6 shortened as otherwise provided by state or federal law.

7 History: L. 1990, ch. 340, § 2; July 1.

1 **77-545. State corporation commission; adjudicative proceedings; ex parte communications;**
2 **file and docket, contents; technical staff, not party to proceedings.**

3 (a) This section applies to adjudicative proceedings before the state corporation commission.

4 (b) (1) After the commission has determined and announced that a hearing should be held, and
5 prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss
6 the merits of the matter or proceeding with the presiding officer unless reasonable notice is given
7 to all parties who have appeared to enable the parties to be present at the conference.

8 (2) After the commission has determined and announced that a hearing should be held, prior to
9 the issuance of a final order, copies of any written communications from any party regarding the
10 proceeding that are directed to the presiding officer shall be mailed to all parties of record and
11 proof of service shall be furnished to the commission. Communications requested by members of
12 the commission staff from any party and any written communications received by members of
13 the commission staff from any party shall be made a part of the file and the docket and shall be
14 made available to all persons who desire to use them, provided that all commission requests for
15 information from a party shall be mailed to all parties of record.

16 (3) The person or persons to whom any ex parte communication has been made shall promptly
17 and fully inform the full commission of the substance of the communication, and the
18 circumstances thereof, to enable the commission to take appropriate action.

19 (c) For purposes of this section, no member of the technical staff shall be considered a party to
20 any proceeding before the commission, regardless of participation in staff investigations with

1 respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of
2 the staff is to aid the commission in the proper discharge of commission duties, the presiding
3 officers shall be free at all times to confer with any staff member with respect to any proceeding.
4 However, no facts that are outside the record, and that reasonably could be expected to influence
5 the decision in any matter pending before the commission, shall be furnished to any presiding
6 officer unless all parties to the proceeding are likewise informed and afforded a reasonable
7 opportunity to respond. Subsection (b) shall apply to staff counsel in regard to any adjudicatory
8 proceeding before the commission.

9 (d) All letters and written communications that are received by the presiding officer from
10 members of the general public, and that are in the nature of ex parte communications, shall be
11 made a part of the file in the docket and shall be made available to all persons who desire to see
12 them. The deposit of such written communications and letters in the file shall not make them a
13 part of the official record of the case.

14 History: L. 1988, ch. 356, § 355; July 1, 1989.

1 **77-546. Commissioner of insurance; adjudicative proceedings; ex parte communications;**
2 **file and docket, contents; technical staff, not party to proceedings.**

3 (a) This section applies to adjudicative proceedings before the commissioner of insurance
4 concerning any rate, or any rule, regulation or practice pertaining to the rates over which the
5 commissioner has jurisdiction and adjudicative proceedings held pursuant to the Kansas
6 insurance holding companies act.

7 (b) (1) After the commissioner has determined and announced that a hearing should be held, and
8 prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss
9 the merits of the matter or proceeding with the presiding officer unless reasonable notice is given
10 to all parties who have appeared to enable the parties to be present at the conference.

11 (2) After the commissioner has determined and announced that a hearing should be held, prior to
12 the issuance of a final order, copies of any written communications from any party regarding the
13 proceeding that are directed to the presiding officer shall be mailed to all parties of record and
14 proof of service shall be furnished to the commissioner. Communications requested by the
15 commissioner's staff from any party and any written communication received by the
16 commissioner's staff from any party shall be made a part of the file and the docket and shall be
17 made available to all persons who desire to use them, provided that the commissioner's requests
18 for information from a party shall be mailed to all parties of record.

19 (3) The person or persons to whom any ex parte communication has been made shall promptly
20 and fully inform the commissioner of the substance of the communication, and the circumstances

1 thereof, to enable the commissioner to take appropriate action.

2 (c) For purposes of this section, no member of the commissioner's technical staff shall be
3 considered a party to any proceeding before the commissioner, regardless of participation in staff
4 investigations with respect to the proceeding or of participation in the proceeding as a witness.

5 Since the purpose of the staff is to aid the commissioner in the proper discharge of the
6 commissioner's duties, the presiding officer shall be free at all times to confer with any staff
7 member with respect to any proceeding. However, no facts that are outside the record, and that
8 reasonably could be expected to influence the decision in any matter pending before the
9 commissioner, shall be furnished to any presiding officer unless all parties to the proceeding are
10 likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply
11 to staff counsel who have participated in the proceeding in regard to any adjudicatory proceeding
12 before the commissioner.

13 (d) All letters and written communications that are received by the presiding officer from
14 members of the general public, and that are in the nature of ex parte communications, shall be
15 made a part of the file in the docket and shall be made available to all persons who desire to see
16 them. The deposit of such written communications and letters in the file shall not make them a
17 part of the official record of the case.

18 History: L. 1988, ch. 356, § 356; July 1, 1989.

1 **77-547. Same; administrative proceedings; agency head, defined.**

2 For purposes of administrative proceedings of the insurance department under the Kansas
3 administrative procedure act, "agency head" means the commissioner of insurance or the
4 assistant commissioner of insurance, when acting on behalf of the commissioner.

5 History: L. 1988, ch. 356, § 358; July 1, 1989.

1 **77-548. Director of taxation; adjudicative proceedings; ex parte communications; file and**
2 **docket, contents; technical staff, not party to proceedings.**

3 (a) This section applies to adjudicative proceedings before the director of taxation. Informal
4 conferences held pursuant to K.S.A. 79-3226, and amendments thereto, shall not be deemed to
5 be adjudicative proceedings for the purposes of this act.

6 (b) (1) After the director has determined and announced that a hearing should be held, and prior
7 to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the
8 merits of the matter or proceeding with the presiding officer unless reasonable notice is given to
9 all parties who have appeared to enable the parties to be present at the conference.

10 (2) After the director has determined and announced that a hearing should be held, prior to the
11 issuance of a final order, copies of any written communications from any party regarding the
12 proceeding that are directed to the presiding officer shall be mailed to all parties of record and
13 proof of service shall be furnished to the director. Communications requested by the director's
14 staff from any party and any written communication received by the director's staff from any
15 party shall be made a part of the file and the docket and shall be made available to all persons
16 who desire to use them, provided that the director's requests for information from a party shall be
17 mailed to all parties of record.

18 (3) The person or persons to whom any ex parte communication has been made shall promptly
19 and fully inform the director of the substance of the communication, and the circumstances
20 thereof, to enable the director of any division within the department to take appropriate action.

1 (c) For purposes of this section, no member of the director's technical staff shall be considered a
2 party to any proceeding before the director, regardless of participation in staff investigations
3 with respect to the proceeding or of participation in the proceeding as a witness. Since the
4 purpose of the staff is to aid the director in the proper discharge of the director's duties, the
5 presiding officer shall be free at all times to confer with any staff member with respect to any
6 proceeding. However, no facts that are outside the record, and that reasonably could be expected
7 to influence the decision in any matter pending before the director, shall be furnished to any
8 presiding officer unless all parties to the proceeding are likewise informed and afforded a
9 reasonable opportunity to respond. Subsection (b) shall apply to staff counsel who have
10 participated in the proceeding in regard to any adjudicatory proceeding before the director.

11 (d) All letters and written communications that are received by the presiding officer from
12 members of the general public, and that are in the nature of ex parte communications, shall be
13 made a part of the file in the docket and shall be made available to all persons who desire to see
14 them. The deposit of such written communications and letters in the file shall not make them a
15 part of the official record of the case.

16 History: L. 1988, ch. 356, § 357; L. 1997, ch. 126, § 6; July 1.

1 **77-549. Same; application for an order; when proceedings required; agency head defined;**
2 **final orders.**

3
4 (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41, 42
5 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be
6 deemed an application for an order under the Kansas administrative procedure act.

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

13 (c) For purposes of administrative proceedings of the division of taxation under the Kansas
14 administrative procedure act, the secretary of revenue may designate the director of the division
15 of taxation or a presiding officer from the office of administrative hearings as agency head.

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

December 9, 2008

1 History: L. 1988, ch. 356, § 359; L. 1995, ch. 175, § 8; L. 1997, ch. 126, § 7; L. 2004, ch. 145, §
2 40; July 1, 2008.

3 Comment

4 The amendments are intended as a clarification.

1 **77-550. Division of property valuation; administrative proceedings; agency head, defined.**

2 For purposes of administrative proceedings of the division of property valuation under the
3 Kansas administrative procedure act, the secretary of revenue may designate the director of the
4 division of property valuation ~~or a presiding officer from the office of administrative hearings~~ as
5 agency head.

6 History: L. 1994, ch. 139, § 1; L. 1997, ch. 126, § 8; L. 2004, Ch. 145, § 41; July 1, 2008.

7 Comment

8 The amendment is intended as a clarification.

1 **77-551. Hearing of state agencies; presiding officer.**

2 (a) Except as provided in subsection (b), in all hearings of any state agency specified in
3 subsection (h) of K.S.A. 75-37,121, and amendments thereto, that are required to be conducted
4 in accordance with the provisions of the Kansas administrative procedure act, the presiding
5 officer shall be the agency head, one or more members of the agency head or a presiding officer
6 assigned by the office of administrative hearings.

7 (b) The provisions of this section shall not apply to the employment security law, pursuant to
8 K.S.A. 44-701 et seq., and amendments thereto or article 5 of chapter 44 and amendments
9 thereto, except K.S.A. 44-532 and 44-5,120 and amendments thereto, concerning the workers
10 compensation act.

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

16 (d) This section shall be part of and supplemental to the Kansas administrative procedure act.

17 History: L. 1997, ch. 182, § 90; L. 2004, ch. 145, § 42; July 1, 2005.

18 **NOTE:** Effective July 1, 2009, K.S.A. 77-551(a) will be amended as follows:

December 9, 2008

1 (a) Except as provided in subsection (b), in all hearings of any state agency ~~specified in~~
2 ~~subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~ that are required to be conducted
3 in accordance with the provisions of the Kansas administrative procedure act, the presiding
4 officer shall be the agency head, one or more members of the agency head or a presiding officer
5 assigned by the office of administrative hearings.

6 L. 2004, Ch. 145, § 43.

7

8

Comment

9

The technical amendment corrects what appears to have been a drafting oversight.

1 **77-561. Office of administrative hearings; director; employees.**

2 There is hereby established the office of administrative hearings. The office shall be
3 administered by the director of administrative hearings. The director of administrative hearings
4 shall be appointed by the governor pursuant to K.S.A. 75-4315a, and amendments thereto, and
5 shall have special training and qualifications for such position. The director of administrative
6 hearings shall employ, and fix compensation of, such assistants or clerks as the director of
7 administrative hearings may from time to time deem necessary.

8 History: L. 2004, ch. 145, § 1; July 1.

1 **77-562. Same; transfer of powers, duties and functions from department of administration**
2 **office of administrative hearings; successor thereto; rules and regulations; title to property.**

3 On and after July 1, 2009: (a) Except as otherwise provided by this act, all of the powers, duties
4 and functions of the office of administrative hearings within the department of administration
5 and the secretary of administration concerning adjudicative proceedings of the Kansas
6 administrative procedure act are hereby transferred to and conferred and imposed upon the office
7 of administrative hearings and the director established by this act.

8 (b) Except as otherwise provided by this act, the office of administrative hearings and the
9 director established by this act shall be the successor in every way to the powers, duties and
10 functions of the office of administrative hearings within the department of administration and the
11 secretary of administration concerning adjudicative proceedings of the Kansas administrative
12 procedure act in which the same were vested prior to the effective date of this section. Every act
13 performed in the exercise of such powers, duties and functions by or under the authority of the
14 office of administrative hearings and the director concerning adjudicative proceedings of the
15 Kansas administrative procedure act established by this act shall be deemed to have the same
16 force and effect as if performed by the office of administrative hearings within the department of
17 administration and the secretary of administration, respectively, in which such powers, duties
18 and functions were vested prior to the effective date of this section.

19 (c) Except as otherwise provided by this act, whenever the office of administrative hearings
20 within the department of administration and the secretary of administration, or words of like

1 effect concerning adjudicative proceedings of the Kansas administrative procedure act, is
2 referred to or designated by a statute, contract or other document, such reference or designation
3 shall be deemed to apply to the office of administrative hearings established by this act.

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

8 (e) All rules and regulations of the office of administrative hearings within the department of
9 administration and the secretary of administration concerning adjudicative proceedings of the
10 Kansas administrative procedure act in existence on the effective date of this section shall
11 continue to be effective and shall be deemed to be duly adopted rules and regulations of the
12 director of the office of administrative hearings established by this act until revised, amended,
13 revoked or nullified pursuant to law.

14 (f) All orders and directives of the office of administrative hearings within the department of
15 administration and the secretary of administration concerning adjudicative proceedings of the
16 Kansas administrative procedure act in existence on the effective date of this section shall
17 continue to be effective and shall be deemed to be orders and directives of the director of the
18 office of administrative hearings established by this act until revised, amended or nullified
19 pursuant to law.

20 (g) On the effective date of this section, the director of the office of administrative hearings
21 established by this act shall succeed to whatever right, title or interest the department of

December 9, 2008

1 administration has acquired in any real property in this state concerning adjudicative proceedings
2 of the Kansas administrative procedure act, and the director of the office of administrative
3 hearings shall hold the same for and in the name of the state of Kansas. On and after the effective
4 date of this section, whenever any statute, contract, deed or other document concerns the power
5 or authority of the office of administrative hearings within the department of administration and
6 the secretary of administration concerning adjudicative proceedings of the Kansas administrative
7 procedure act to acquire, hold or dispose of real property or any interest therein, the office of
8 administrative hearings and the director as established by this act shall succeed to such power or
9 authority.

10 (h) The office of administrative hearings and the director established by this act shall be
11 continuations of the office of administrative hearings within the department of administration
12 and the secretary of administration concerning adjudicative proceedings of the Kansas
13 administrative procedure act.

14 History: L. 2004, ch. 145, § 2; July 1.

1 **77-563. Same; officers and employees transferred; benefits and rights.**

2 Except as otherwise provided in this act, on July 1, 2009, any presiding officer in the
3 administrative hearings section of all agencies which conduct hearings pursuant to the Kansas
4 administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and
5 amendments thereto, and support personnel for such presiding officers, shall be transferred to
6 and shall become employees of the office of administrative hearings established under this act.

7 Such personnel shall retain all rights under the state personnel system and retirement benefits
8 under the laws of this state which had accrued to or vested in such personnel prior to the
9 effective date of this section. Such person's services shall be deemed to have been continuous.

10 All transfers of personnel positions in the classified service under the Kansas civil service act
11 shall be in accordance with civil service laws and any rules and regulations adopted thereunder.

12 This section shall not affect any matter pending before an administrative hearing officer at the
13 time of the effective date of the transfer, and such matter shall proceed as though no transfer of
14 employment had occurred.

15 History: L. 2004, ch. 145, § 3; July 1.

1 **77-564. Same; conflicts as to power, function or duty to be resolved by governor.**

2 On and after July 1, 2009:

3 (a) When any conflict arises as to the disposition of any power, function or duty or the
4 unexpended balance of any appropriation as a result of any abolition, transfer, attachment or
5 change made by or under authority of this act, such conflict shall be resolved by the governor,
6 whose decision shall be final.

7 (b) The office of administrative hearings shall succeed to all property and records which were
8 used for or pertain to the performance of the powers, duties and functions transferred to the
9 office of administrative hearings. Any conflict as to the proper disposition of property or records
10 arising under this section, and resulting from the transfer or attachment of any state agency, or all
11 or part of the powers, duties and functions thereof, shall be determined by the governor, whose
12 decision shall be final.

13 History: L. 2004, ch. 145, § 4; July 1.

1 **77-565. Same; legal custody of records transferred; no abatement of suits, actions or**
2 **proceedings.**

3 On and after July 1, 2009:

4 (a) The office of administrative hearings shall have the legal custody of all records, memoranda,
5 writings, entries, prints, representations or combinations thereof of any act, transaction,
6 occurrence or event of the office of administrative hearings within the department of
7 administration concerning adjudicative proceedings of the Kansas administrative procedure act
8 and any agency or office transferred thereto under this act.

9 (b) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which
10 could have been commenced, by or against any state agency mentioned in this act, or by or
11 against any officer of the state in such officer's official capacity or in relation to the discharge of
12 such officer's official duties, shall abate by reason of the governmental reorganization effected
13 under the provisions of this act. The court may allow any such suit, action or other proceeding to
14 be maintained by or against the successor of any such state agency or any officer affected.

15 (c) No criminal action commenced or which could have been commenced by the state shall abate
16 by the taking effect of this act.

17 History: L. 2004, ch. 145, § 5; July 1.

1 **77-566. Same; balance of funds and liabilities transferred.**

2 (a) On and after July 1, 2009, the balance of all funds appropriated and reappropriated to the
3 office of administrative hearings within the department of administration concerning
4 adjudicative proceedings of the Kansas administrative procedure act is hereby transferred to the
5 office of administrative hearings and shall be used only for the purpose for which the
6 appropriation was originally made.

7 (b) On and after July 1, 2009, the liability for all accrued compensation or salaries of officers and
8 employees who, immediately prior to such date, were engaged in the performance of powers,
9 duties or functions of the office of administrative hearings within the department of
10 administration concerning adjudicative proceedings of the Kansas administrative procedure act,
11 or who become a part of the office of administrative hearings established by this act, or the
12 powers, duties and functions of which are transferred to the office of administrative hearings
13 provided for by this act, shall be assumed and paid by the office of administrative hearings
14 established by this act.

15 History: L. 2004, ch. 145, § 6; July 1.

OPEN RECORDS ACT

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45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is

otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant

1 reporting a specific violation of law.

2 (6) Letters of reference or recommendation pertaining to the character or qualifications of an
3 identifiable individual, except documents relating to the appointment of persons to fill a vacancy
4 in an elected office.

5 (7) Library, archive and museum materials contributed by private persons, to the extent of any
6 limitations imposed as conditions of the contribution.

7 (8) Information which would reveal the identity of an individual who lawfully makes a donation
8 to a public agency, if anonymity of the donor is a condition of the donation, except if the
9 donation is intended for or restricted to providing remuneration or personal tangible benefit to a
10 named public officer or employee.

11 (9) Testing and examination materials, before the test or examination is given or if it is to be
12 given again, or records of individual test or examination scores, other than records which show
13 only passage or failure and not specific scores.

14 (10) Criminal investigation records, except as provided herein. The district court, in an action
15 brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such
16 records, subject to such conditions as the court may impose, if the court finds that disclosure:

17 (A) Is in the public interest;

18 (B) would not interfere with any prospective law enforcement action, criminal investigation or
19 prosecution;

1 (C) would not reveal the identity of any confidential source or undercover agent;

2 (D) would not reveal confidential investigative techniques or procedures not known to the
3 general public;

4 (E) would not endanger the life or physical safety of any person; and

5 (F) would not reveal the name, address, phone number or any other information which
6 specifically and individually identifies the victim of any sexual offense in article 35 of chapter
7 21 of the Kansas Statutes Annotated, and amendments thereto.

8 If a public record is discretionarily closed by a public agency pursuant to this subsection, the
9 record custodian, upon request, shall provide a written citation to the specific provisions of
10 paragraphs (A) through (F) that necessitate closure of that public record.

11 (11) Records of agencies involved in administrative adjudication or civil litigation, compiled in
12 the process of detecting or investigating violations of civil law or administrative rules and
13 regulations, if disclosure would interfere with a prospective administrative adjudication or civil
14 litigation or reveal the identity of a confidential source or undercover agent.

15 (12) Records of emergency or security information or procedures of a public agency, or plans,
16 drawings, specifications or related information for any building or facility which is used for
17 purposes requiring security measures in or around the building or facility or which is used for the
18 generation or transmission of power, water, fuels or communications, if disclosure would
19 jeopardize security of the public agency, building or facility.

1 (13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or
2 for a public agency relative to the acquisition of property, prior to the award of formal contracts
3 therefor.

4 (14) Correspondence between a public agency and a private individual, other than
5 correspondence which is intended to give notice of an action, policy or determination relating to
6 any regulatory, supervisory or enforcement responsibility of the public agency or which is
7 widely distributed to the public by a public agency and is not specifically in response to
8 communications from such a private individual.

9 (15) Records pertaining to employer-employee negotiations, if disclosure would reveal
10 information discussed in a lawful executive session under K.S.A. 75-4319, and amendments
11 thereto.

12 (16) Software programs for electronic data processing and documentation thereof, but each
13 public agency shall maintain a register, open to the public, that describes:

14 (A) The information which the agency maintains on computer facilities; and

15 (B) the form in which the information can be made available using existing computer programs.

16 (17) Applications, financial statements and other information submitted in connection with
17 applications for student financial assistance where financial need is a consideration for the
18 award.

19 (18) Plans, designs, drawings or specifications which are prepared by a person other than an

1 employee of a public agency or records which are the property of a private person.

2 (19) Well samples, logs or surveys which the state corporation commission requires to be filed
3 by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes
4 for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by
5 rules and regulations of the state corporation commission.

6 (20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals,
7 memoranda, recommendations or other records in which opinions are expressed or policies or
8 actions are proposed, except that this exemption shall not apply when such records are publicly
9 cited or identified in an open meeting or in an agenda of an open meeting.

10 (21) Records of a public agency having legislative powers, which records pertain to proposed
11 legislation or amendments to proposed legislation, except that this exemption shall not apply
12 when such records are:

13 (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

14 (B) distributed to a majority of a quorum of any body which has authority to take action or make
15 recommendations to the public agency with regard to the matters to which such records pertain.

16 (22) Records of a public agency having legislative powers, which records pertain to research
17 prepared for one or more members of such agency, except that this exemption shall not apply
18 when such records are:

19 (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

1 (B) distributed to a majority of a quorum of any body which has authority to take action or make
2 recommendations to the public agency with regard to the matters to which such records pertain.

3 (23) Library patron and circulation records which pertain to identifiable individuals.

4 (24) Records which are compiled for census or research purposes and which pertain to
5 identifiable individuals.

6 (25) Records which represent and constitute the work product of an attorney.

7 (26) Records of a utility or other public service pertaining to individually identifiable residential
8 customers of the utility or service, except that information concerning billings for specific
9 individual customers named by the requester shall be subject to disclosure as provided by this
10 act.

11 (27) Specifications for competitive bidding, until the specifications are officially approved by the
12 public agency.

13 (28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

14 (29) Correctional records pertaining to an identifiable inmate or release, except that:

15 (A) The name; photograph and other identifying information; sentence data; parole eligibility
16 date; custody or supervision level; disciplinary record; supervision violations; conditions of
17 supervision, excluding requirements pertaining to mental health or substance abuse counseling;
18 location of facility where incarcerated or location of parole office maintaining supervision and

1 address of a releasee whose crime was committed after the effective date of this act shall be
2 subject to disclosure to any person other than another inmate or releasee, except that the
3 disclosure of the location of an inmate transferred to another state pursuant to the interstate
4 corrections compact shall be at the discretion of the secretary of corrections;

5 (B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for
6 the inmate to whom the record pertains and any county or district attorney shall have access to
7 correctional records to the extent otherwise permitted by law;

8 (C) the information provided to the law enforcement agency pursuant to the sex offender
9 registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure
10 to any person, except that the name, address, telephone number or any other information which
11 specifically and individually identifies the victim of any offender required to register as provided
12 by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall
13 not be disclosed; and

14 (D) records of the department of corrections regarding the financial assets of an offender in the
15 custody of the secretary of corrections shall be subject to disclosure to the victim, or such
16 victim's family, of the crime for which the inmate is in custody as set forth in an order of
17 restitution by the sentencing court.

18 (30) Public records containing information of a personal nature where the public disclosure
19 thereof would constitute a clearly unwarranted invasion of personal privacy.

20 (31) Public records pertaining to prospective location of a business or industry where no

1 previous public disclosure has been made of the business' or industry's interest in locating in,
2 relocating within or expanding within the state. This exception shall not include those records
3 pertaining to application of agencies for permits or licenses necessary to do business or to
4 expand business operations within this state, except as otherwise provided by law.

5 (32) Engineering and architectural estimates made by or for any public agency relative to public
6 improvements.

7 (33) Financial information submitted by contractors in qualification statements to any public
8 agency.

9 (34) Records involved in the obtaining and processing of intellectual property rights that are
10 expected to be, wholly or partially vested in or owned by a state educational institution, as
11 defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized
12 and existing for the benefit of the institution.

13 (35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and
14 amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and
15 amendments thereto.

16 (36) Information which would reveal the precise location of an archeological site.

17 (37) Any financial data or traffic information from a railroad company, to a public agency,
18 concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

19 (38) Risk-based capital reports, risk-based capital plans and corrective orders including the

1 working papers and the results of any analysis filed with the commissioner of insurance in
2 accordance with K.S.A. 40-2c20 and 40-2d20 and amendments thereto.

3 (39) Memoranda and related materials required to be used to support the annual actuarial
4 opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

5 (40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A.
6 40-2,156, and amendments thereto.

7 (41) All financial analysis ratios and examination synopses concerning insurance companies that
8 are submitted to the commissioner by the national association of insurance commissioners'
9 insurance regulatory information system.

10 (42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming
11 compact.

12 (43) Market research, market plans, business plans and the terms and conditions of managed care
13 or other third party contracts, developed or entered into by the university of Kansas medical
14 center in the operation and management of the university hospital which the chancellor of the
15 university of Kansas or the chancellor's designee determines would give an unfair advantage to
16 competitors of the university of Kansas medical center.

17 (44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by
18 domestic corporations, foreign corporations, domestic limited liability companies, foreign
19 limited liability companies, domestic limited partnership, foreign limited partnership, domestic

1 limited liability partnerships and foreign limited liability partnerships.

2 (45) Records, other than criminal investigation records, the disclosure of which would pose a
3 substantial likelihood of revealing security measures that protect: (A) Systems, facilities or
4 equipment used in the production, transmission or distribution of energy, water or
5 communications services; (B) transportation and sewer or wastewater treatment systems,
6 facilities or equipment; or (C) private property or persons, if the records are submitted to the
7 agency. For purposes of this paragraph, security means measures that protect against criminal
8 acts intended to intimidate or coerce the civilian population, influence government policy by
9 intimidation or coercion or to affect the operation of government by disruption of public
10 services, mass destruction, assassination or kidnapping. Security measures include, but are not
11 limited to, intelligence information, tactical plans, resource deployment and vulnerability
12 assessments.

13 (46) Any information or material received by the register of deeds of a county from military
14 discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to
15 such dischargee's immediate family members and lineal descendants; to such dischargee's heirs,
16 agents or assigns; to the licensed funeral director who has custody of the body of the deceased
17 dischargee; when required by a department or agency of the federal or state government or a
18 political subdivision thereof; when the form is required to perfect the claim of military service or
19 honorable discharge or a claim of a dependent of the dischargee; and upon the written approval
20 of the commissioner of veterans affairs, to a person conducting research.

1 (47) Information that would reveal the location of a shelter or a safehouse or similar place where
2 persons are provided protection from abuse or the name, address, location or other contact
3 information of alleged victims of crime, domestic violence, or sexual assault when the release of
4 such information may jeopardize the health, safety, or liberty of that person.

5 (b) Except to the extent disclosure is otherwise required by law or as appropriate during the
6 course of an administrative proceeding or on appeal from agency action, a public agency or
7 officer shall not disclose financial information of a taxpayer which may be required or requested
8 by a county appraiser or the director of property valuation to assist in the determination of the
9 value of the taxpayer's property for ad valorem taxation purposes; or any financial information of
10 a personal nature required or requested by a public agency or officer, including a name, job
11 description or title revealing the salary or other compensation of officers, employees or
12 applicants for employment with a firm, corporation or agency, except a public agency. Nothing
13 contained herein shall be construed to prohibit the publication of statistics, so classified as to
14 prevent identification of particular reports or returns and the items thereof.

15 (c) As used in this section, the term "cited or identified" shall not include a request to an
16 employee of a public agency that a document be prepared.

17 (d) If a public record contains material which is not subject to disclosure pursuant to this act, the
18 public agency shall separate or delete such material and make available to the requester that
19 material in the public record which is subject to disclosure pursuant to this act. If a public record
20 is not subject to disclosure because it pertains to an identifiable individual, the public agency
21 shall delete the identifying portions of the record and make available to the requester any

1 remaining portions which are subject to disclosure pursuant to this act, unless the request is for a
2 record pertaining to a specific individual or to such a limited group of individuals that the
3 individuals' identities are reasonably ascertainable, the public agency shall not be required to
4 disclose those portions of the record which pertain to such individual or individuals.

5 (e) The provisions of this section shall not be construed to exempt from public disclosure
6 statistical information not descriptive of any identifiable person.

7 (f) Notwithstanding the provisions of subsection (a), any public record which has been in
8 existence more than 70 years shall be open for inspection by any person unless disclosure of the
9 record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas
10 supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

11 (g) Any confidential records or information relating to security measures provided or received
12 under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other
13 demand in any administrative, criminal or civil action.

14 Comment

15 The Council recommends that the Open Records Act be amended to provide that
16 agencies are not required to disclose the name, address, location or other contact information of
17 alleged victims of crime, abuse, domestic violence or sexual assault if release of that information
18 might jeopardize their health, safety, or liberty . The Council also recommends a new section be
19 added to KAPA (77-503a) to allow a presiding officer to protect this kind of sensitive
20 information.

December 9, 2008

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