

**ARTICLE 6.--ACT FOR JUDICIAL REVIEW AND
CIVIL ENFORCEMENT OF AGENCY ACTIONS**

GENERAL PROVISIONS

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77-601. Title.

K.S.A. 77-601 through ~~77-627~~ 77-631 shall be known and may be cited as the ~~act for judicial review and civil enforcement of agency actions~~ Kansas judicial review act.

History: L. 1984, ch. 338, § 1; July 1.

Comment

The first amendment reflects the addition of various new sections to the KJRA since it was originally enacted in 1984. The second amendment changes the name of the act to the Kansas judicial review act. Because both bench and bar commonly refer to the act by that short title and commonly abbreviate the title as the “KJRA,” the Advisory Committee recommends that the name of the act be changed to reflect common usage.

1 **77-602. Definitions.**

2

3 As used in this act:

4 (a) "Agency" means a state agency.

5 (b) "Agency action" means:

6 (1) The whole or a part of a rule and regulation or an order;

7 (2) the failure to issue a rule and regulation or an order; or

8 (3) an agency's performance of, or failure to perform, any other duty, function or activity,
9 discretionary or otherwise.

10 (c) "Agency head" means an individual or body of individuals in whom the ultimate legal
11 authority of the agency is vested by any provision of law.

12 (d) "License" means a franchise, permit, certification, approval, registration, charter or similar
13 form of authorization required by law.

14 (e) "Order" means an agency action of particular applicability that determines the legal rights,
15 duties, privileges, immunities or other legal interests of one or more specific persons.

16 (f) "Party to agency proceedings," or "party" in context so indicating, means:

17 (1) A person to whom the agency action is specifically directed; or

18 (2) a person named as a party to any agency proceeding or allowed to intervene or participate as
19 a party in the proceeding.

20 (g) "Party to judicial review or civil enforcement proceedings," or "party" in context so
21 indicating, means:

1 (1) A person who files a petition for judicial review; or
2 (2) a person named as a party in a proceeding for judicial review or civil enforcement or allowed
3 to participate as a party in the proceeding.

4 (h) "Person" means an individual, partnership, corporation, association, political subdivision or
5 unit thereof, or public or private organization or entity of any character, and includes another
6 agency.

7 (i) "Rule and regulation" means a standard, statement of policy or general order, including
8 amendments or revocations thereof, of general application and having the effect of law, issued or
9 adopted by an agency to implement or interpret legislation enforced or administered by such
10 agency or to govern the organization of procedure of such agency.

11 (j) "Rulemaking" means the process for formulation and adoption of a rule and regulation.

12 (k) "State agency" means any officer, department, bureau, division, board, authority, agency,
13 commission or institution of this state which is authorized by law to administer, enforce or
14 interpret any law of this state but does not include any political or taxing subdivision of the state,
15 or any agency thereof, or the judicial or legislative branch of state government.

16 History: L. 1984, ch. 338, § 2; L. 1986, ch. 318, § 1; July 1.

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1 **77-603. Application and construction.**

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3 This act applies to all agencies and all proceedings for judicial review and civil enforcement of
4 agency actions not specifically exempted by statute from the provisions of this act.

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

7 (c) This act does not apply to agency actions:

8 (1) Of the Kansas parole board concerning inmates or persons under parole or conditional release
9 supervision;

10 (2) concerning the management, discipline or release of persons in the custody of the secretary of
11 corrections;

12 (3) concerning the management, discipline or release of persons in the custody of the
13 commissioner of juvenile justice;

14 (4) under the election laws contained in chapter 25 of the Kansas Statutes Annotated, and
15 amendments thereto, except as provided by K.S.A. 25-4185, and amendments thereto;

16 (5) concerning pardon, commutation of sentence, clemency or extradition;

17 (6) concerning military or naval affairs other than actions relating to armories;

18 (7) governed by the provisions of the open records act and subject to an action for enforcement
19 pursuant to K.S.A. 45-222, and amendments thereto; ~~or~~

20 (8) governed by the provisions of K.S.A. 75-4317 et seq., and amendments thereto, relating to
21 open public meetings, and subject to an action for civil penalties or enforcement pursuant to

1 K.S.A. 75-4320 or 75-4320a, and amendments thereto; or
2 (9) concerning the civil commitment of sexually violent predators pursuant to K.S.A. 59-29a01
3 et seq., and amendments thereto.

4 History: L. 1984, ch. 338, § 3; L. 1986, ch. 318, § 2; L. 1988, ch. 369, § 7; L. 2005, ch. 9, § 1;
5 July 1.

6 Comment

7 This amendment provides that the KJRA does not apply to agency actions concerning the
8 civil commitment of sexually violent predators pursuant to K.S.A. 59-29a01 *et seq.* The
9 amendment is intended as a direct response to *Williams v. DesLauriers*, 38 Kan. App. 2d 629,
10 172 P.3d 42 (2007), which held that the KJRA, rather than petition for writ of habeas corpus,
11 was the appropriate method for a sexually violent predator who was civilly committed to a state
12 hospital to assert his due process claim.

1 **77-604. Waiver.**

2

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

5 History: L. 1984, ch. 338, § 4; July 1.

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1 ~~77-605. Effective date.~~

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3 ~~This act takes effect on July 1, 1984, and does not govern proceedings for judicial review and~~
4 ~~civil enforcement of agency actions pending on that date. In accordance with K.S.A. 77-603, this~~
5 ~~act governs all proceedings for judicial review and civil enforcement of agency actions~~
6 ~~commenced after that date.~~

7 History: L. 1984, ch. 338, § 5; July 1.

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Comment

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

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JUDICIAL REVIEW

77-606. Act exclusive means of review.

In accordance with K.S.A. 77-603 and amendments thereto, this act establishes the exclusive means of judicial review of agency action.

History: L. 1984, ch. 338, § 6; L. 1986, ch. 318, § 3; July 1.

1 **77-607. Persons entitled to review; final agency action.**

2

3 (a) A person who qualifies under this act regarding (1) standing (K.S.A. 77-611), (2) exhaustion
4 of administrative remedies (K.S.A. 77-612) and (3) time for filing the petition for judicial review
5 (K.S.A. 77-613) and other applicable provisions of law regarding bond, compliance and other
6 preconditions is entitled to judicial review of final agency action, whether or not the person has
7 sought judicial review of any related nonfinal agency action.

8 (b) For purposes of this section and K.S.A. 77-608:

9 (1) "Final agency action" means the whole or a part of any agency action other than nonfinal
10 agency action;

11 (2) "Nonfinal agency action" means the whole or a part of an agency determination,
12 investigation, proceeding, hearing, conference or other process that the agency intends or is
13 reasonably believed to intend to be preliminary, preparatory, procedural or intermediate with
14 regard to subsequent agency action of that agency or another agency.

15 History: L. 1984, ch. 338, § 7; July 1.

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1 **77-608. Same; nonfinal agency action.**

2

3 A person is entitled to interlocutory review of nonfinal agency action only if:

4 (a) It appears likely that the person will qualify under K.S.A. 77-607 for judicial review of the
5 related final agency action; and

6 (b) postponement of judicial review would result in an inadequate remedy or irreparable harm
7 disproportionate to the public benefit derived from postponement.

8 History: L. 1984, ch. 338, § 8; July 1.

9

1 **77-609. Jurisdiction, venue.**

2

3 (a) The district court shall conduct judicial review except when:

4 (1) A statute specifically provides for review of an agency action by appeal directly to the court
5 of appeals; or

6 (2) otherwise provided by law.

7 (b) Except as otherwise provided by K.S.A. 8-259, 31-144, 44-556, 72-5430a and 74-2426, and
8 amendments thereto, venue is in the county in which the order or agency action is entered or is
9 effective or the rule and regulation is promulgated.

10 History: L. 1984, ch. 338, § 9; L. 1986, ch. 318, § 4; July 1.

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1 **77-610. Initiation of action; form of action.**

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3 Judicial review is initiated by filing a petition for judicial review in the appropriate court and
4 payment of the docket fee as required by K.S.A. 60-2001 and amendments thereto. A petition for
5 judicial review may seek any type of relief available under K.S.A. 77-622 and amendments
6 thereto. If a petition seeks any type of relief available under K.S.A. 77-622 and amendments
7 thereto, such petition shall be deemed a petition for judicial review under this section, however
8 such petition may be characterized on the face thereof.

9 History: L. 1984, ch. 338, § 10; L. 1986, ch. 318, § 5; July 1.

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1 **77-611. Standing.**

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3 The following persons have standing to obtain judicial review of final or nonfinal agency action:

4 (a) A person to whom the agency action is specifically directed;

5 (b) a person who was a party to the agency proceedings that led to the agency action;

6 (c) if the challenged agency action is a rule and regulation, a person subject to that rule; or

7 (d) a person eligible for standing under another provision of law.

8 History: L. 1984, ch. 338, § 11; July 1.

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1 **77-612. Exhaustion of administrative remedies.**

2
3 A person may file a petition for judicial review under this act only after exhausting all
4 administrative remedies available within the agency whose action is being challenged and within
5 any other agency authorized to exercise administrative review, but:

6 (a) A petitioner for judicial review of a rule or regulation need not have participated in the
7 rulemaking proceeding upon which that rule and regulation is based, or have petitioned for its
8 amendment or repeal;

9 (b) a petitioner for judicial review need not exhaust administrative remedies to the extent that
10 this act or any other statute states that exhaustion is not required; **and**

11 (c) a petitioner for judicial review need not seek reconsideration unless a statute makes the filing
12 of a petition for reconsideration a prerequisite for seeking judicial review; **and**

13 **(d) the court may relieve a petitioner of the requirement to exhaust any or all administrative**
14 **remedies to the extent that the administrative remedies are inadequate or would result in**
15 **irreparable harm.**

16 History: L. 1984, ch. 338, § 12; L. 1995, ch. 175, § 9; July 1.

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18 Comment

19 The purpose of the recommended amendment is to clarify and codify existing case law
20 exceptions to the requirement that a petitioner for judicial review must first exhaust
21 administrative remedies. See, e.g., *State ex Rel. Slusher v. City of Leavenworth*, 285 Kan. 438,

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1 172 P.3d 1154 (2007) (if no agency remedy is available or if remedy is inadequate, exhaustion of
2 administrative remedies is not required); *In re Lietz Const. Co.*, 273 Kan. 890, 47 P.3d 1275
3 (2002) (constitutional issues do not lend themselves to administrative determination and are
4 subject to de novo review; thus, they are properly before the court even though they were not
5 first argued before the agency). The language of the amendment was taken from Section 507(e)
6 of the draft Revised Model State Administrative Procedure Act.
7

1 **77-613. Time for filing petition; service of order, pleading or other matter.**

2
3 Subject to other requirements of this act or of another statute:

4 (a) A petition for judicial review of a rule and regulation may be filed at any time, except as
5 otherwise provided by law.

6 (b) If reconsideration has not been requested and is not a prerequisite for seeking judicial review,
7 a petition for judicial review of a final order shall be filed within 30 days after service of the
8 order.

9 (c) Except as provided in K.S.A. 77-631, if reconsideration has been requested or is a
10 prerequisite for seeking judicial review, a petition for judicial review of a final order shall be
11 filed: (1) Within 30 days after service of the order rendered upon reconsideration, unless a
12 further petition for reconsideration is required under K.S.A. 66-118b and amendments thereto;
13 (2) within 30 days after service of an order denying the request for reconsideration; or (3) in
14 proceedings before the Kansas corporation commission, within 30 days of the date the request
15 for reconsideration is deemed to have been denied.

16 (d) A petition for judicial review of agency action other than a rule and regulation or final order
17 shall be filed within 30 days after the agency action, but the time is extended:

18 (1) During the pendency of the petitioner's timely attempts to exhaust administrative remedies;
19 and

20 (2) during any period that the petitioner did not know and was under no duty to discover, or did
21 not know and was under a duty to discover but could not reasonably have discovered, that the

1 agency had taken the action or that the agency action had a sufficient effect to confer standing
2 upon the petitioner to obtain judicial review under this act.

3 (e) Service of an order, pleading or other matter shall be made upon the parties to the agency
4 proceeding and their attorneys of record, if any, by delivering a copy of it to them or by mailing
5 a copy of it to them at their last known addresses. Delivery of a copy of an order, pleading or
6 other matter means handing it to the person being served or leaving it at that person's principal
7 place of business or residence with a person of suitable age and discretion who works or resides
8 therein. Service shall be presumed if the presiding officer, or a person directed to make service
9 by the presiding officer, makes a written certificate of service. Service by mail is complete upon
10 mailing. Whenever a party has the right or is required to do some act or take some proceedings
11 within a prescribed period after service of an order, pleading or other matter and it is served by
12 mail, three days shall be added to the prescribed period. Unless reconsideration is a prerequisite
13 for seeking judicial review, a final order shall state the agency officer to receive service of a
14 petition for judicial review on behalf of the agency.

15 History: L. 1984, ch. 338, § 13; L. 1986, ch. 318, § 6; L. 1995, ch. 175, § 10; July 1.

1 **77-614. Petition; filing and contents; responsive pleading, filing and service.**

2
3 (a) A petition for judicial review shall be filed with the clerk of the court.

4 (b) A petition for judicial review shall set forth:

5 (1) The name and mailing address of the petitioner;

6 (2) the name and mailing address of the agency whose action is at issue;

7 (3) identification of the agency action at issue, together with a duplicate copy, summary or brief
8 description of the agency action;

9 (4) identification of persons who were parties in any adjudicative proceedings that led to the
10 agency action;

11 (5) facts to demonstrate that the petitioner is entitled to obtain judicial review;

12 (6) the petitioner's reasons for believing that relief should be granted; and

13 (7) a request for relief, specifying the type and extent of relief requested.

14 (c) Failure to include some of the information listed in subsection (b) in the initial petition does
15 not deprive the reviewing court of jurisdiction over the appeal. Leave to supplement the petition
16 with omitted information required by subsection (b) shall be freely given when justice so
17 requires.

18 ~~(e)~~ (d) Within 30 days after service on the agency or notice to other parties of the petition as
19 provided in K.S.A. 77-615, and amendments thereto, a party to judicial review proceedings may
20 file an answer or other responsive pleading and shall serve a copy of any such answer or
21 pleading in the manner provided by subsection (e) of K.S.A. 77-613, and amendments thereto,

1 upon all parties to the proceedings.

2 (e) In any method of serving process, substantial compliance shall effect valid service of process
3 if the court finds that, notwithstanding some irregularity or omission, the party served was made
4 aware that the petition or appeal had been filed.

5 History: L. 1984, ch. 338, § 14; L. 1986, ch. 318, § 7; L. 1995, ch. 175, § 11; July 1.

6
7 Comment

8 The amendments to this section are intended to accomplish three objectives: 1) prevent
9 dismissal of an appeal for lack of jurisdiction when there is some defect in the petition for
10 judicial review; 2) allow the petition to be amended under the same standard as K.S.A. 60-215;
11 and 3) provide that substantial compliance with service requirements is sufficient under the same
12 standard as K.S.A. 60-204. Because the amendments are based on provisions from the code of
13 civil procedure, any existing case law interpretations of the corresponding provisions will be
14 helpful to courts interpreting the amendments.

15
16 The amendments are intended as a direct response to *Bruch v. Dept. of Revenue*, 282
17 Kan. 764, 148 P.3d 538 (2006), and similar cases which have required strict compliance with the
18 pleading requirements of this section. The Advisory Committee believes that pleading and
19 service requirements for judicial review of an administrative action should be no more difficult
20 or technical than similar requirements under the code of civil procedure.

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1 **77-615. Petition, service and notice.**

2

3 (a) A petitioner for judicial review shall serve a copy of the petition in the manner provided by
4 subsection (e) of K.S.A. 77-613, and amendments thereto, upon the agency head, on any other
5 person or persons designated by the agency head to receive service, on any agency officer
6 designated to receive service in an order or on the agency officer who signs an order.

7 (b) The petitioner shall give notice of the petition for judicial review to all other parties in any
8 adjudicative proceedings that led to the agency action.

9 History: L. 1984, ch. 338, § 15; L. 1986, ch. 318, § 8; L. 1995, ch. 175, § 12; July 1.

10

1 **77-616. Stay and other temporary remedies.**

2

3 (a) Unless precluded by law, the agency may grant a stay on appropriate terms or other
4 temporary remedies during the pendency of judicial review.

5 (b) A party may file a motion in the reviewing court, during the pendency of judicial review,
6 seeking interlocutory review of the agency's action on an application for stay or other temporary
7 remedies.

8 (c) If the agency has found that its action on an application for stay or other temporary remedies
9 is justified to protect against a substantial threat to the public health, safety or welfare, the court
10 may not grant relief unless it finds that:

11 (1) The applicant is likely to prevail when the court finally disposes of the matter;

12 (2) without relief the applicant will suffer irreparable injury;

13 (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings;

14 and

15 (4) the threat to the public health, safety or welfare relied on by the agency is not sufficiently
16 serious to justify the agency's action in the circumstances.

17 (d) If subsection (c) does not apply, the court shall grant relief if it finds, in its independent
18 judgment, that the agency's action on the application for stay or other temporary remedies was
19 unreasonable in the circumstances.

20 (e) If the court determines that relief should be granted from the agency's action on an
21 application for stay or other temporary remedies, the court may remand the matter to the agency

1 with directions to deny a stay, to grant a stay on appropriate terms or to grant other temporary
2 remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms or
3 granting other temporary remedies. As used in this subsection, "appropriate terms" may include
4 requirement of a bond.

5 (f) Except as otherwise authorized by rule of the supreme court, the court shall not issue any ex
6 parte order pursuant to this section.

7 (g) This section shall not apply to proceedings under K.S.A. 66-118g through 66-118k, and
8 amendments thereto.

9 History: L. 1984, ch. 338, § 16; July 1.

10

1 **77-617. Limitations on new issues.**

2

3 A person may obtain judicial review of an issue that was not raised before the agency, only to
4 the extent that:

5 (a) The agency did not have jurisdiction to grant an adequate remedy based on a determination of
6 the issue;

7 (b) the agency action subject to judicial review is a rule and regulation and the person has not
8 been a party in adjudicative proceedings which provided an adequate opportunity to raise the
9 issue;

10 (c) the agency action subject to judicial review is an order and the person was not notified of the
11 adjudicative proceeding; or

12 (d) the interests of justice would be served by judicial resolution of an issue arising from:

13 (1) A change in controlling law occurring after the agency action; or

14 (2) agency action occurring **or first reasonably knowable to the person** after the person exhausted
15 the last feasible opportunity for seeking relief from the agency.

16 History: L. 1984, ch. 338, § 17; L. 1987, ch. 184, § 4; July 1.

17

18

Comment

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20 The amendment in subsection (d)(2) is intended to allow a party to raise an issue which
21 the party was not aware of, and could not reasonably have been aware of, before the filing of the
petition for judicial review. For example, a party might find out about an *ex parte*

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1 communication with the agency only after a petition for judicial review was filed. K.S.A. 77-
2 619 already allows a district court to receive evidence about the unlawfulness of the decision-
3 making process. The amendment to this section explicitly allows such an issue to be raised.
4

1 **77-618. Review of disputed facts, extent.**

2

3 Judicial review of disputed issues of fact shall be confined to the agency record for judicial
4 review as supplemented by additional evidence taken pursuant to this act, except that review of:

5 (a) Orders of the director of workers' compensation under the workmen's compensation act shall
6 be in accordance with K.S.A. 44-556 and amendments thereto;

7 (b) orders of the Kansas human rights commission under the Kansas act against discrimination or
8 the Kansas age discrimination in employment act shall be in accordance with K.S.A. 44-1011
9 and 44-1021 and amendments thereto;

10 (c) orders of the division of vehicles, other than orders under K.S.A. 8-254, and amendments
11 thereto, which deny, cancel, suspend or revoke a driver's license shall be in accordance with
12 K.S.A. 8-259 and amendments thereto;

13 (d) orders of the secretary of labor under K.S.A. 72-5413 through 72-5431, and amendments
14 thereto, shall be in accordance with K.S.A. 72-5430a and amendments thereto; and

15 (e) orders of the state fire marshal under K.S.A. 31-144, and amendments thereto, shall be in
16 accordance with that section.

17 History: L. 1984, ch. 338, § 18; L. 1985, ch. 308, § 2; L. 1986, ch. 318, § 9; L. 1991, ch. 148, §
18 12; L. 2004, ch. 179, § 144; July 1.

19

1 **77-619. Additional evidence.**

2
3 (a) The court may receive evidence, in addition to that contained in the agency record for judicial
4 review, only if it relates to the validity of the agency action at the time it was taken and is needed
5 to decide disputed issues regarding:

6 (1) Improper constitution as a decision-making body; or improper motive or grounds for
7 disqualification, of those taking the agency action; or

8 (2) unlawfulness of procedure or of decision-making process.

9 (b) The court may remand a matter to the agency, before final disposition of a petition for
10 judicial review, with directions that the agency conduct fact-finding and other proceedings the
11 court considers necessary and that the agency take such further action on the basis thereof as the
12 court directs, if:

13 (1) The agency was required to base its action exclusively on a record of a type reasonably
14 suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

15 (2) the court finds that (A) new evidence has become available that relates to the validity of the
16 agency action at the time it was taken, that one or more of the parties did not know and was
17 under no duty to discover, or did not know and was under a duty to discover but could not
18 reasonably have discovered until after the agency action, and (B) the interests of justice would be
19 served by remand to the agency;

20 (3) the agency improperly excluded or omitted evidence from the record; or

21 (4) a relevant provision of law changed after the agency action and the court determines that the

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- 1 new provision may control the outcome.
- 2 History: L. 1984, ch. 338, § 19; July 1.

1 **77-620. Agency record; contents, preparation, transmittal, cost.**

2
3 (a) Within 30 days after service of the petition for judicial review, or within further time allowed
4 by the court or by other provision of law, the agency shall transmit to the court the original or a
5 certified copy of the agency record for judicial review of the agency action, consisting of any
6 agency documents expressing the agency action, other documents identified by the agency as
7 having been considered by it before its action and used as a basis for its action and any other
8 material required by law as the agency record for the type of agency action at issue, subject to
9 the provisions of this section.

10 (b) If part of the record has been preserved without a transcript, the agency shall prepare a
11 transcript for inclusion in the record transmitted to the court, except for portions that the parties
12 stipulate to omit in accordance with subsection (c). Unless otherwise ordered by the court, the
13 cost of the preparation of the transcript shall be paid by the appellant.

14 (c) By stipulation of all parties to the judicial review proceedings, the record may be shortened,
15 summarized or organized.

16 (d) The court may tax the cost of preparing transcripts and copies for the record against a party
17 who unreasonably refuses to stipulate to shorten, summarize or organize the record.

18 (e) Additions to the record pursuant to K.S.A. 77-619 shall be made as ordered by the court.

19 (f) The court may require or permit subsequent corrections or additions to the record.

20 History: L. 1984, ch. 338, § 20; July 1.

1 **77-621. Scope of review.**

2

3 (a) Except to the extent that this act or another statute provides otherwise:

4 (1) The burden of proving the invalidity of agency action is on the party asserting invalidity; and

5 (2) the validity of agency action shall be determined in accordance with the standards of judicial
6 review provided in this section, as applied to the agency action at the time it was taken.

7 (b) The court shall make a separate and distinct ruling on each material issue on which the
8 court's decision is based.

9 (c) The court shall grant relief only if it determines any one or more of the following:

10 (1) The agency action, or the statute or rule and regulation on which the agency action is based,
11 is unconstitutional on its face or as applied;

12 (2) the agency has acted beyond the jurisdiction conferred by any provision of law;

13 (3) the agency has not decided an issue requiring resolution;

14 (4) the agency has erroneously interpreted or applied the law;

15 (5) the agency has engaged in an unlawful procedure or has failed to follow prescribed
16 procedure;

17 (6) the persons taking the agency action were improperly constituted as a decision-making body
18 or subject to disqualification;

19 (7) the agency action is based on a determination of fact, made or implied by the agency, that is
20 not supported **to the appropriate standard of proof** by evidence that is substantial when viewed in
21 light of the record as a whole, which includes the agency record for judicial review,

1 supplemented by any additional evidence received by the court under this act; or

2 (8) the agency action is otherwise unreasonable, arbitrary or capricious.

3 (d) For purposes of this section, “in light of the record as a whole” means that the adequacy of
4 the evidence in the record before the court to support a particular finding of fact shall be judged
5 in light of all the relevant evidence in the record cited by any party that detracts from such
6 finding as well as all of the relevant evidence in the record, compiled pursuant to K.S.A. 77-620
7 and amendments thereto, cited by any party that supports such finding, including any
8 determinations of veracity by the presiding officer who personally observed the demeanor of the
9 witness and the agency’s explanation of why the relevant evidence in the record supports its
10 material findings of fact. In reviewing the evidence in light of the record as a whole, the court
11 shall not reweigh the evidence or engage in de novo review.

12 (e) In making the foregoing determinations, due account shall be taken by the court of the rule of
13 harmless error.

14 History: L. 1984, ch. 338, § 21; July 1.

15
16 Comment

17 Under current Kansas law, courts reviewing administrative decisions are instructed to
18 disregard contrary evidence in the record and focus solely on the evidence that supports the
19 agency findings. See *Blue Cross and Blue Shield of Kansas v. Praeger*, 276 Kan. 232, 263, 75
20 P.3d 226, 246 (2003). The Advisory Committee believes this approach accords excessive
21 deference to the agency and erects a nearly insurmountable barrier for parties challenging agency

1 action. The current Kansas approach is a significant departure from the usual understanding (at
2 the federal level and in other states) of the requirement that an agency decision be supported by
3 substantial evidence “in light of the record as a whole,” which includes consideration of the
4 contrary evidence in the record. See, e.g., *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 71
5 S.Ct. 456 (1951).

6
7 The amendment contained in new subsection (d) directs the reviewing court, when
8 applying the substantial evidence standard of review, to consider the whole record, including the
9 evidence that detracts from the agency finding, and specifically requires consideration of any
10 contrary hearing officer findings. The amendment is adapted from one of two alternative
11 versions of the scope of review standards contained in Section 509 of the draft Revised Model
12 State Administrative Procedure Act. The Committee chose the alternative which best clarifies
13 the substantial evidence standard and explicitly addresses the role of the hearing officer’s
14 decision. The Committee believes that the amendment strikes an appropriate balance between
15 protecting the independent factual findings of a hearing officer and preserving the agency’s role
16 as the entity to which the Legislature delegated policy-making authority.

17
18 The Committee heard concerns from some agencies that the Committee’s recommended
19 amendment would encourage courts to adopt a de novo standard of review. To clarify that this is
20 not the intended effect of the amendment, the Committee added the final sentence in subsection
21 (d) indicating that courts are not to reweigh evidence or engage in de novo review. The

1 Committee believes this would restore the original intent of the KJRA that reviewing courts
2 should consider the substantiality of the evidence supporting the agency decision in light of the
3 entire record. The last sentence added to subsection (d) was not adapted from the Revised
4 Model Act.

5

6 The amendment to subsection (c)(7) is intended to clarify that the appropriate standard of
7 judicial review of an agency's factual determination is dependent on the underlying standard of
8 proof.

1 **77-622. Relief on final disposition.**

2

3 (a) The court may award damages or compensation only to the extent expressly authorized by
4 another provision of law.

5 (b) The court may grant other appropriate relief, whether mandatory, injunctive or declaratory;
6 preliminary or final; temporary or permanent; equitable or legal. In granting relief, the court may
7 order agency action required by law, order agency exercise of discretion required by law, set
8 aside or modify agency action, enjoin or stay the effectiveness of agency action, remand the
9 matter for further proceedings, render a declaratory judgment or take any other action that is
10 authorized and appropriate.

11 (c) The court may also grant necessary ancillary relief to redress the effects of official action
12 wrongfully taken or withheld, but the court may award attorney's fees or witness fees only to the
13 extent expressly authorized by other law.

14 (d) If the court sets aside or modifies agency action or remands the matter to the agency for
15 further proceedings, the court may make any interlocutory order it finds necessary to preserve
16 the interests of the parties and the public pending further proceedings or agency action.

17 History: L. 1984, ch. 338, § 22; July 1.

18

1 **77-623. Review by higher court.**

2

3 Decisions on petitions for judicial review of agency action are reviewable by the appellate courts
4 as in other civil cases.

5 History: L. 1984, ch. 338, § 23; July 1.

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CIVIL ENFORCEMENT

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77-624. Initiation of action; petition; venue; form of action.

(a) In addition to other remedies provided by law, an agency may seek enforcement of its rule and regulation or order by filing a petition for civil enforcement in the district court.

(b) The petition shall name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

(c) A party to an agency hearing may seek enforcement of a subpoena, discovery order or protective order by filing a petition for civil enforcement in the district court. The petition shall name, as defendants, each person against whom the party seeks to obtain civil enforcement.

(d) Venue shall be in the county:

(1) In which the order is entered or the rule and regulation is promulgated; or

(2) determined in the manner provided for determination of venue in other civil cases.

(e) A petition for civil enforcement may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law or any combination of the foregoing.

History: L. 1984, ch. 338, § 24; L. 1989, ch. 283, § 8; July 1.

1 **77-625. Defenses; limitations on new issues and new evidence.**

2

3 A defendant may assert, in a proceeding for civil enforcement, any of the following defenses on
4 which the court, to the extent necessary for the determination of the matter, may consider new
5 issues or take new evidence:

6 (a) The rule and regulation or order does not apply to the party;

7 (b) the party has not violated the rule or order;

8 (c) the party has violated the rule and regulation or order but has subsequently complied, but a
9 party who establishes this defense is not necessarily relieved from any sanction provided by law
10 for past violations; or

11 (d) any other defense allowed by law.

12 History: L. 1984, ch. 338, § 25; July 1.

13

1 **77-626. Agency record.**

2

3 Proceedings for civil enforcement shall be governed by the provisions of K.S.A. 77-620 as
4 modified where necessary to adapt them to those proceedings.

5 History: L. 1984, ch. 338, § 26; July 1.

6

1 **77-627. Review by higher court.**

2

3 Decisions on petitions for civil enforcement are reviewable by the appellate courts as in other
4 civil cases.

5 History: L. 1984, ch. 338, § 27; July 1.

6

December 9, 2008

1 **77-628 to 77-630. Reserved.**

2

3

1 **77-631. Failure of agency to act in timely manner, interlocutory review of agency's failure**
2 **to act.**

3
4 (a) A person aggrieved by the failure of an agency to act in a timely manner as required by
5 K.S.A. 77-526 or 77-549, and amendments thereto, or as otherwise required by law, is entitled to
6 interlocutory review of the agency's failure to act.

7 (b) If an agency, not including the Kansas corporation commission, does not act on a petition for
8 reconsideration within the time prescribed by K.S.A. 77-529, and amendments thereto, a party
9 may petition for judicial review of the final order at any time within 90 days of service of such
10 final order. If prior to the filing of a petition for judicial review under this subsection, the agency
11 grants the petition for reconsideration, the time for seeking judicial review of an order rendered
12 upon such reconsideration shall be governed by subsection (c) of K.S.A. 77-613, and
13 amendments thereto.

14 (c) This section shall be part of and supplemental to the act for judicial review and civil
15 enforcement of agency actions.

16 History: L. 1995, ch. 175, § 1; July 1.