

SENATE BILL No. 376

AN ACT concerning administrative procedure; amending K.S.A. 2-1011, 2-1206, 2-1222, 2-1232, 2-1423, 2-2215, 2-2452, 2-3312, 2-3317, 8-2410, 9-535, 9-1111, 9-1135, 9-1721, 9-1804, 9-2107, 9-2108, 12-16,106, 16a-6-414, 17-12a609, 17-5225d, 25-4185, 31-142, 39-7,143, 39-7,144, 39-7,145, 39-7,146, 39-7,150, 39-7,151, 39-931, 39-964, 40-205d, 40-251, 40-1621, 41-323, 42-703, 44-5,120, 44-829, 44-928, 44-1011, 44-1044, 44-1208, 46-243, 46-263, 46-292, 47-1216, 47-1507, 47-1708, 48-1608, 48-1613, 49-422a, 49-621, 55-164, 55-1,119, 55-443, 55-606, 55-1410, 58-1307, 58-1405, 58-3058, 58-3314, 58-3959, 58-4120, 58-4211, 65-170d, 65-171s, 65-1,207, 65-1,210, 65-1,211, 65-438, 65-440, 65-504, 65-6a34a, 65-785, 65-788, 65-1121a, 65-1431a, 65-1451, 65-1458, 65-1518, 65-1628, 65-1828, 65-2844, 65-2851a, 65-3312, 65-3412, 65-3417, 65-3419, 65-3424l, 65-3440, 65-3446, 65-3456a, 65-3458, 65-34,106, 65-34,122, 65-34,153, 65-4015, 65-4120, 65-4211, 65-4509, 65-5310, 65-5314, 65-5315, 65-5416, 65-5516, 65-5815, 65-6412, 65-6509, 65-7009, 65-7010, 65-7216, 66-118c, 66-1,164, 68-2213, 72-5430a, 74-719, 74-5337, 74-7028, 74-7030, 74-7315, 74-8813, 74-8815, 75-2748, 75-2929h, 75-3342, 75-4330, 75-4334, 75-5951, 76-12a13, 77-522, 77-536, 77-631, 82a-1211, 82a-1214, 82a-1217, 82a-1410 and 82a-1505 and K.S.A. 2009 Supp. 1-311, 1-312, 2-1008, 2-1201b, 2-2206, 2-2440e, 2-2511, 8-259, 8-1020, 8-2404, 8-2411, 8-2603, 8-2605, 8-2606, 9-1805, 12-5325, 12-5354, 16a-6-108, 17-2221a, 25-4713, 25-4715, 31-134, 31-144, 31-159, 31-606, 32-950, 32-1114, 36-509, 36-515b, 39-925, 39-944, 39-947, 39-948, 39-1412, 44-322a, 44-556, 44-612, 44-709, 44-710b, 47-624, 47-1706, 47-1707, 47-1809, 47-2101, 55-1639, 65-163, 65-163a, 65-171d, 65-1,234, 65-516, 65-6a24, 65-6a56, 65-1469, 65-2005, 65-2305, 65-2422d, 65-2912, 65-3008a, 65-3490, 65-34,113, 65-7313, 68-2240, 72-974, 74-596, 74-598, 74-2426, 74-32,173, 74-5369, 74-5616, 74-5617, 75-7c07, 75-2714, 75-2724, 75-2973, 75-3307b, 75-6207, 76-11a11, 79-4707, 82a-302, 82a-724, 82a-737, 82a-1038, 82a-1216, 82a-1901, 82a-2005, 83-501 and 83-502 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 1-311 is hereby amended to read as follows: 1-311. (a) The board may deny an application for a Kansas certificate, revoke or suspend any certificate issued under the laws of this state, may revoke, suspend or refuse to renew any permit issued under K.S.A. 1-310 and amendments thereto, or may revoke or suspend a practice privilege under K.S.A. 1-322, and amendments thereto, and any notification issued pursuant to K.S.A. 1-322, and amendments thereto, may censure the holder of any such permit, certificate, notification or practice privilege, limit the scope of practice of any permit holder, and may impose an administrative fine not exceeding \$5,000, for any one of the following causes:

- (1) Fraud, dishonesty or deceit in obtaining a certificate, permit, firm registration, notification or practice privilege;
 - (2) cancellation, revocation, suspension or refusal to renew a person's authority to practice for disciplinary reasons in any other jurisdiction for any cause;
 - (3) failure, on the part of a holder of a permit to practice, notification or practice privilege to maintain compliance with the requirements for issuance or renewal of such permit, notification or practice privilege;
 - (4) revocation or suspension of the right to practice by the PCAOB or any state or federal agency;
 - (5) dishonesty, fraud or gross negligence in the practice of certified public accountancy;
 - (6) failure to comply with applicable federal or state requirements regarding the timely filing of the person's personal tax returns, the tax returns of the person's firm or the timely remittance of payroll and other taxes collected on behalf of others;
 - (7) violation of any provision of this act or rule and regulation of the board except for a violation of a rule of professional conduct;
 - (8) willful violation of a rule of professional conduct;
 - (9) violation of any order of the board;
 - (10) conviction of any felony, or of any crime an element of which is dishonesty, deceit or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas;
 - (11) performance of any fraudulent act while holding a Kansas certificate;
 - (12) making any false or misleading statement or verification, in support of an application for a certificate, permit, notification or firm registration filed by another;
 - (13) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501, and amendments thereto; and
 - (14) any conduct reflecting adversely on a person's fitness to practice certified public accountancy.
- (b) In lieu of or in addition to any remedy specifically provided in

subsection (a), the board may require of a permit holder satisfactory completion of such continuing education programs as the board may specify.

(c) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions.~~

Sec. 2. K.S.A. 2009 Supp. 1-312 is hereby amended to read as follows: 1-312. (a) Except as provided in subsection (b), the board may deny an application to register a firm, revoke or suspend a firm's registration, censure a firm, limit the scope of practice of a firm or impose such remedial action as it deems necessary to protect the public interest, or both, and impose an administrative fine not exceeding \$5,000 for any one of the following causes:

(1) Failure to meet the requirements of K.S.A. 1-308 and amendments thereto;

(2) fraud, dishonesty or deceit in obtaining a registration;

(3) revocation or suspension of a firm's right to practice by the PCAOB or any state or federal agency;

(4) dishonesty, fraud or gross negligence in the practice of certified public accountancy;

(5) violation of any provision of chapter 1 of the Kansas Statutes Annotated and rules and regulations promulgated by the board except for a violation of a rule of professional conduct;

(6) willful violation of a rule of professional conduct;

(7) violation of any order of the board;

(8) cancellation, revocation, suspension or refusal to renew the authority of a firm to practice certified public accountancy in any other state;

(9) conviction of any felony, or of any crime an element of which is dishonesty, deceit or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas; or

(10) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501 and amendments thereto;

(b) In actions arising under peer review for reports modified for matters relating to attest services, the board may take such remedial action as it deems necessary to protect the public interest. However, the board may not limit the scope of practice of attest services of a firm or limit the scope of practice of attest services of any permit holder under K.S.A. 1-311, and amendments thereto, for failure to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards unless:

(1) The firm has received at least two modified peer review reports during 12 consecutive years relating to attest services and the board finds that the firm has exhibited a course of conduct that reflects a pattern of noncompliance with applicable professional standards and practices; or

(2) the firm has failed to abide by remedial measures required by a peer review committee or the board.

(c) Nothing in subsection (b) shall be construed to preclude the board from: Limiting the scope of practice of attest services of a firm or limiting the scope of practice of attest services of a permit holder under K.S.A. 1-311, and amendments thereto; or taking such remedial action as the board deems necessary to protect the public interest, after the board's review of an adverse peer review report based on matters relating to attest services if the board determines that the firm failed to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards.

(d) After considering AICPA standards on peer review, the board may define, by rules and regulations, the terms "modified" and "adverse."

(e) At the time of suspension or revocation of a firm's registration, the board may suspend or revoke the permit to practice of a member, shareholder or partner of a firm if the permit holder is the only Kansas member, shareholder or partner of the firm. The permit shall be reinstated upon reinstatement of the firm's registration.

(f) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions.~~

(g) The board shall not have the power to assess fines under this section if a fine has been assessed for the same or similar violation under the provisions of subsection (a) of K.S.A. 1-311 and amendments thereto.

Sec. 3. K.S.A. 2009 Supp. 2-1008 is hereby amended to read as follows: 2-1008. (a) The secretary and the duly authorized representatives thereof shall have free access to all places of business, mills, buildings and vessels, of whatsoever kind, used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs and may open any parcel containing, or supposed to contain, any commercial feeding stuffs and may take therefrom, in the manner prescribed in K.S.A. 2-1009 and amendments thereto, samples for analysis and shall pay the retail price of the sample or samples procured. Before entering the premises, the representatives of the Kansas department of agriculture shall make application to party or parties in charge of any manufacturer, importer, jobber, firm, association, corporation or person who sells, offers, or exposes for sale or distributes in this state any commercial feeding stuffs.

(b) The secretary or a duly authorized representative thereof, acting as the enforcing officer, may issue and enforce a written or printed stop sale order to the owner or custodian of any quantity of commercial feeding stuffs which the secretary or the duly authorized representative of the secretary determines to be misbranded or adulterated or contains or may contain any substance injurious to public health or the health of livestock, poultry or pets or which are sold, offered or exposed for sale in violation of any of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or any rules and regulations adopted thereunder. The stop sale order shall prohibit further sale and movement of such commercial feeding stuffs, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale order. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

Sec. 4. K.S.A. 2-1011 is hereby amended to read as follows: 2-1011. (1) It shall be deemed a violation of this act for any manufacturer, importer, jobber, firm, association, corporation or person to sell, offer or expose for sale, or distribute in this state any commercial feeding stuffs:

(A) Unless the manufacturer, importer, jobber, firm, association, corporation or person has been issued a license for each manufacturing or distribution facility pursuant to K.S.A. 2-1014, and amendments thereto; (B) which is not labeled as required by law; (C) which bears a false or misleading statement on the label or the advertising accompanying the commercial feeding stuffs; (D) which is adulterated or contains any substance or substances which may render the commercial feeding stuffs injurious to public health or the health of livestock, poultry and pets.

(2) It shall be deemed a violation of this act for any manufacturer, importer, jobber, firm, association, corporation or person to: (A) Mutilate, destroy, obliterate or remove the label or any part thereof, or do any act which may result in the misbranding or false labeling of such commercial feeding stuffs; (B) fail or neglect to file the tonnage report and pay the inspection fee due thereon as required; (C) file a false report of the tonnage of feeding stuffs sold for any period; (D) impede, obstruct, hinder or otherwise prevent or attempt to prevent the secretary or the secretary's authorized agents in the performance of any duty in connection with the enforcement of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

(3) Any manufacturer, importer, jobber, firm, association, corporation or person who shall violate any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is

subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(4) Any manufacturer, importer, jobber, firm, association, corporation or person who shall violate any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or the rules and regulations adopted, in a willful or wanton manner shall be guilty of a class A, nonperson misdemeanor.

(5) Any commercial feeding stuffs misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or the health of livestock, poultry or pets or which is offered or exposed for sale in violation of any of the provisions of article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto shall be subject to seizure in place until such time that the final disposition of the affected feeding stuffs has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected feeding stuffs are misbranded, adulterated or contain a substance or substances that may be injurious to public health or the health of livestock, poultry or pets, the secretary shall issue an order establishing measures to prevent further contamination or the threat to public or animal health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary may order the destruction of contaminated feeding stuffs if no alternative assures that further contamination or health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act by injunction.

Sec. 5. K.S.A. 2009 Supp. 2-1201b is hereby amended to read as follows: 2-1201b. (a) It shall be deemed a violation of K.S.A. 2-1201 and 2-1201a, and amendments thereto, for any person to: (1) Sell or distribute in this state any custom blended fertilizer when such person does not hold a valid license as required by this act; or (2) fail to comply with the requirements of K.S.A. 2-1201a, and amendments thereto, and, except as otherwise provided, the provisions of K.S.A. 2-1208, and amendments thereto. Failure to comply with the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments thereto, shall not be deemed a violation of this section. The penalties as provided in K.S.A. 2-1208, and amendments thereto shall apply to persons as described in this section who fail to comply with the provisions of K.S.A. 2-1208, and amendments thereto.

(b) On and after July 1, 2003, any person or custom blender who violates any provision of article 12 of chapter 2 of Kansas Statutes Annotated, and amendments thereto or the rules and regulations adopted pursuant thereto, may incur a civil penalty in an amount not more than \$5,000 per violation. In the case of a continuing violation, every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The secretary shall remit any civil penalty collected pursuant to this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 6. K.S.A. 2-1206 is hereby amended to read as follows: 2-1206. (a) The secretary and authorized representatives of the secretary shall make such inspection of commercial fertilizers as may be deemed necessary to ascertain whether manufacturers and others are complying with all of the provisions of this act. The secretary or authorized representatives of the secretary shall procure annually samples of commercial fertilizer and cause analyses to be made. A certified statement of the results of such analysis shall be prima facie evidence in any action within the state of Kansas concerning such commercial fertilizer.

(b) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale order to the owner or custodian of any quantity of any commercial fertilizer which the secretary or duly authorized representative determines is not registered, is not labeled as required, is misbranded or bears a false or misleading statement on the application for registration,

the label or the accompanying advertising in violation of the provisions of the statutes contained in article 12 of chapter 2 of the Kansas Statutes Annotated and amendments thereto, or any rules and regulations adopted thereunder. The stop sale order shall prohibit further sale and movement of such commercial fertilizer, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale order. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 12 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

Sec. 7. K.S.A. 2-1222 is hereby amended to read as follows: 2-1222.

(a) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale or stop use order to the owner or custodian of any facility or equipment used for the storage, handling or transportation of anhydrous ammonia which the secretary or duly authorized representative determines is not in compliance with the provisions of K.S.A. 2-1212 through 2-1220, and amendments thereto, or any rules and regulations adopted thereunder. The stop sale or stop use order shall prohibit the sale of anhydrous ammonia or prohibit further use of such facility or equipment for the handling, storage or transportation of anhydrous ammonia, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale or stop use order. Any stop sale or stop use order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 12 of chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

(b) This section shall be part of and supplemental to the provisions of K.S.A. 2-1212 through 2-1220, and amendments thereto.

Sec. 8. K.S.A. 2-1232 is hereby amended to read as follows: 2-1232.

(a) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale order or stop use order when there is reason to believe, based on inspections or tests, that the facility or equipment for the transporting, handling, distributing, dispensing, selling, storage or disposal of commercial fertilizer or bulk fertilizer has been, is currently or intends to be in violation of any provision of K.S.A. 2-1226 through 2-1231, and amendments thereto, or the rules and regulations adopted thereunder.

(b) The stop sale order or stop use order shall prohibit further sale of commercial fertilizer or bulk fertilizer or prohibit further use of such facility or equipment for the transporting, handling, distributing, dispensing, selling, storage or disposal of commercial fertilizer or bulk fertilizer, except in accordance with the provisions of the order or on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale order or stop use order.

(c) The stop sale order or stop use order may be issued to any person who runs, controls, operates or has custody of any facility or equipment or may be posted in a conspicuous place in, on or about the facility or equipment affected by the order.

(d) Any order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(e) The provisions of this subsection shall not be construed as limiting the right of the enforcing officer to proceed as authorized by other provisions of the statutes contained in article 12 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

Sec. 9. K.S.A. 2-1423 is hereby amended to read as follows: 2-1423.

(a) *Inspection*. The secretary or a duly authorized representative of the

secretary shall inspect, sample and determine the purity and germination of agricultural seed at such time and in such places, and to such extent as the secretary or representatives of the secretary consider advisable. The secretary or an authorized representative of the secretary may stop further sale or movement of any lot or lots of agricultural seed found to be in violation of any of the provisions of this act until compliance with the law has been satisfied or other disposition made. It shall be the duty of the secretary or a duly authorized representative of the secretary to: (1) Enforce and administer this act; (2) sample, inspect, make analysis of and test agricultural seeds transported, sold, offered for sale or exposed for sale within the state for planting and seeding purposes at such time and place and to such extent as considered necessary to determine whether the agricultural seeds are in compliance with provisions of this act; and (3) cooperate with the United States department of agriculture and other agencies in seed law enforcement.

(b) *Access.* The secretary or authorized representatives of the secretary shall have free access during reasonable hours to all places of business, buildings, vehicles, cars and vessels, of whatsoever kind, used in the sale, transportation, importation or storage of agricultural seed and shall have the authority to: (1) Inspect the records concerning the place of origin, or concerning the sale, of any agricultural seed; (2) open any package containing or suspected of containing any agricultural seed that is exposed or offered for sale; and (3) take therefrom samples of contents for examination. The owner of the seed shall be paid the retail price of the sample so procured if the owner so requests.

(c) *Stop sale orders.* The secretary or authorized representatives of the secretary shall have the authority to: (1) Issue and enforce a written or printed “stop sale” order to the owner or custodian of any quantity of agricultural seed which the secretary or duly authorized representatives of the secretary determine to be in violation of any of the provisions of this act or rules and regulations adopted hereunder, which order shall prohibit further sale, processing and movement of such seed, except on approval of the enforcing officer, until such officer has evidence that the law has been complied with and issues a release from the “stop sale” order of such seed. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this act.

Sec. 10. K.S.A. 2009 Supp. 2-2206 is hereby amended to read as follows: 2-2206. (a) The examination of agricultural chemicals shall be made under the direction of the secretary, or an authorized representative of the secretary, for the purpose of determining whether they comply with the requirements of this act. If it appears from such examination that an agricultural chemical fails to comply with the provisions of this act and the secretary, or an authorized representative of the secretary, contemplates instituting criminal proceedings against any person, the secretary or the authorized representative of the secretary shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present such person’s views, either orally or in writing, with regard to such contemplated proceedings. If thereafter in the opinion of the secretary, or an authorized representative of the secretary, it appears that the provisions of the act have been violated by such person, then the secretary or an authorized representative of the secretary may refer the facts to the county attorney or district attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of such article. Nothing in this act shall be construed as requiring the secretary or the authorized representative of the secretary to report for prosecution or for the institution of libel proceedings any minor violations of the act whenever the secretary or the authorized representative of the secretary believes that the public interests will be best served by a suitable notice of warning in writing.

(b) It shall be the duty of each county attorney or district attorney to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(c) The secretary, or an authorized representative of the secretary, is

authorized to give notice of all judgments entered in actions instituted under the authority of this act by publication in such manner as the secretary may prescribe.

(d) The secretary or a duly authorized representative of the secretary, acting as the enforcing officer, may issue and enforce a written or printed stop sale, use or removal order to the owner or custodian of any quantity of an agricultural chemical which the secretary or duly authorized representative determines is adulterated or misbranded, is not registered as required under K.S.A. 2-2204 and amendments thereto, fails to bear on its label the required information, has an altered or defaced label or the pesticide product has pesticide or pesticide residue on the container or packaging. The stop sale, use or removal order shall prohibit further sale and movement of such agricultural chemical, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale, use or removal order. Any stop sale, use or removal order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 22 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

(e) The representative of the secretary may issue a stop sale, use or removal order for any pesticide product held for distribution to any pesticide dealer who has failed to register as a pesticide dealer under the requirements of K.S.A. 2-2469, and amendments thereto.

(f) During reasonable business hours, the secretary or secretary's representative shall have the authority to enter any locations where pesticides, pest control devices or pest control systems are being held for sale and distribution in order to conduct inspections, obtain samples and other evidence, obtain copies of records and otherwise document compliance with the provisions of this act.

Sec. 11. K.S.A. 2-2215 is hereby amended to read as follows: 2-2215. In addition to any other remedy which may be available, any action of the secretary pursuant to the agricultural chemical act of 1947 is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 12. K.S.A. 2009 Supp. 2-2440e is hereby amended to read as follows: 2-2440e. (a) Any pesticide business licensee or pesticide dealer who violates any of the provisions of K.S.A. 2-2453 or 2-2454, and amendments thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon a finding that a pesticide business licensee or pesticide dealer or any employee or agent thereof or any person or entity required to be licensed as a pesticide business licensee or registered as a pesticide dealer who violates any of the provisions of K.S.A. 2-2453 and 2-2454, and amendments thereto, may impose a civil penalty as provided in this section upon such licensee or dealer.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the pesticide business licensee or pesticide dealer who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such pesticide business licensee or pesticide dealer to appeal to the secretary. Any such licensee or dealer, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(e) Any civil penalty recovered pursuant to the provisions of this sec-

tion shall be remitted to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the Kansas pesticide law.

Sec. 13. K.S.A. 2-2452 is hereby amended to read as follows: 2-2452. The licensee or certificate holder may appeal from the decision and order, in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 14. K.S.A. 2009 Supp. 2-2511 is hereby amended to read as follows: 2-2511. (a) In addition to any other penalty provided by law, any person who violates any provision of this act, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty of not less than \$100 nor more than \$500 for each such violation. In the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The potential or actual harm, or both, caused by the violation;

- (2) the nature and persistence of the violation;
- (3) the length of time over which the violation occurs;
- (4) compliance history;
- (5) any corrective actions taken; and
- (6) any and all other relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(h) The provisions of this section shall be part of and supplemental to the Kansas egg law.

Sec. 15. K.S.A. 2-3312 is hereby amended to read as follows: 2-3312. The registrant or permit holder may obtain review of an order of the secretary revoking or suspending a chemigation user registration or chemigation user's permit or denying or declining to issue or to renew such registration or permit in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 16. K.S.A. 2-3317 is hereby amended to read as follows: 2-3317. (a) Any person who violates any of the provisions of the Kansas chemigation safety law, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon a finding that a person or any employee or agent has violated the Kansas chemigation safety law, may impose a civil penalty as provided in this section upon such person.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation. Such order shall state the vio-

lation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the Kansas chemigation safety law.

Sec. 17. K.S.A. 2009 Supp. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(2)(A), (a)(3)(A) or (a)(3)(B) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and amendments thereto, or of an order of disqualification under subsection (a)(1)(D) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. Unless the petitioner's driving privileges have been extended pursuant to subsection (o) of K.S.A. 8-1020, and amendments thereto, the court on review may grant a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto, after considering the petitioner's traffic violations record and liability insurance coverage. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within 10 days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 18. K.S.A. 2009 Supp. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 10 days after service of notice; or

(2) transmitting a written request by electronic facsimile which is received by the division within 10 days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative

hearing, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) Upon receipt of a timely request for a hearing, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than five days prior to the date of hearing:

- (1) The officer's certification and notice of suspension;
- (2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;
- (3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and
- (4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

(l) Evidence at the hearing shall be limited to the following:

(1) The documents set out in subsection (e);

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

(4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;

(5) any affidavits submitted from other witnesses;

(6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

(7) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the

administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a non-resident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 10 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for action by the agency have been met, the court shall affirm the agency action.

(q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three

days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

Sec. 19. K.S.A. 2009 Supp. 8-2404 is hereby amended to read as follows: 8-2404. (a) No vehicle dealer shall engage in business in this state without obtaining a license as required by this act. Any vehicle dealer holding a valid license and acting as a vehicle salesperson shall not be required to secure a salesperson's license.

(b) No first stage manufacturer, second stage manufacturer, factory branch, factory representative, distributor branch or distributor representative shall engage in business in this state without a license as required by this act, regardless of whether or not an office or other place of business is maintained in this state for the purpose of conducting such business.

(c) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such other information as may be deemed reasonable and pertinent, and shall be accompanied by the required fee. The director may require in the application, or otherwise, information relating to the applicant's solvency, financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the director in determining the fitness of the applicant to engage in business as set forth in this section. The director may require the applicant for licensing to appear at such time and place as may be designated by the director for examination to enable the director to determine the accuracy of the facts contained in the written application, either for initial licensure or renewal thereof. Every application under this section shall be verified by the applicant.

(d) All licenses shall be granted or refused within 30 days after application is received by the director. All licenses, except licenses issued to salespersons, shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which they are granted, except that where a complaint respecting the cancellation, termination or nonrenewal of a sales agreement is in the process of being heard, no replacement application shall be considered until a final order is issued by the director. Applications for renewals, except for renewals of licenses issued to salespersons, received by the director after February 15 shall be considered as new applications. All salespersons' licenses issued on or after January 1, 1987, shall expire on June 30, 1988, and thereafter shall expire, unless previously suspended or revoked, on June 30 of the calendar year for which they are granted. Applications for renewals of salespersons' licenses received by the director after July 15 shall be considered as new applications. All licenses for supplemental places of business existing or issued on or after January 1, 1994, shall expire on December 31, 1994, unless previously expired, suspended or revoked, and shall thereafter expire on December 31 of the calendar year for which they are granted, unless previously suspended or revoked.

(e) License fees for each calendar year, or any part thereof shall be as follows:

- (1) For new vehicle dealers, \$75;
- (2) for distributors, \$75;
- (3) for wholesalers, \$75;
- (4) for distributor branches, \$75;
- (5) for used vehicle dealers, \$75;
- (6) for first and second stage manufacturers, \$225 plus \$75 for each factory branch in this state;
- (7) for factory representatives, \$50;
- (8) for distributor representatives, \$50;
- (9) for brokers, \$75;
- (10) for lending agencies, \$50;
- (11) for first and second stage converters, \$50;
- (12) for salvage vehicle dealers, \$75;

- (13) for auction motor vehicle dealers, \$75;
- (14) for vehicle salesperson, \$25;
- (15) for insurance companies, \$75;
- (16) for vehicle crusher, \$75;
- (17) for vehicle recycler, \$75;
- (18) for scrap metal recycler, \$75;
- (19) for rebuilders, \$75; and
- (20) for salvage vehicle pool, \$75.

Any new vehicle dealer who is also licensed as a used vehicle dealer shall be required to pay only one \$75 fee for both licenses.

(f) Dealers may establish approved supplemental places of business within the same county of their licensure or, with respect to new vehicle dealers, within their area of responsibility as defined in their franchise agreement. Those doing so shall be required to pay a supplemental license fee of \$35. In addition to any other requirements, new vehicle dealers seeking to establish supplemental places of business shall also comply with the provisions of K.S.A. 8-2430 through 8-2432, and amendments thereto. A new vehicle dealer establishing a supplemental place of business in a county other than such dealer's county of licensure but within such dealer's area of responsibility as defined in such dealer's franchise agreement shall be licensed only to do business as a new motor vehicle dealer in new motor vehicles at such supplemental place of business. Original inspections by the division of a proposed established place of business shall be made at no charge except that a \$30 fee shall be charged by the division for each additional inspection the division must make of such premises in order to approve the same.

(g) The license of all persons licensed under the provisions of this act shall state the address of the established place of business, office, branch or supplemental place of business and must be conspicuously displayed therein. The director shall endorse a change of address on a license without charge if: (1) The change of address of an established place of business, office, branch or supplemental place of business is within the same county; or (2) the change of address of a supplemental place of business, with respect to a new vehicle dealer, is within such dealer's area of responsibility as defined in their franchise agreement. A change of address of the established place of business, office or branch to a different county shall require a new license and payment of the required fees but such new license and fees shall not be required for a change of address of a supplemental place of business, with respect to a new vehicle dealer, to a different county but within the dealer's area of responsibility as defined in their franchise agreement.

(h) Every salesperson, factory representative or distributor representative shall carry on their person a certification that the person holds a valid state license. The certification shall name the person's employer and shall be displayed upon request. An original copy of the state license for a vehicle salesperson shall be mailed or otherwise delivered by the division to the employer of the salesperson for public display in the employer's established place of business. When a salesperson ceases to be employed as such, the former employer shall mail or otherwise return the original copy of the employee's state license to the division. A salesperson, factory representative or distributor representative who terminates employment with one employer may file an application with the director to transfer the person's state license in the name of another employer. The application shall be accompanied by a \$12 transfer fee. A salesperson, factory representative or distributor representative who terminates employment, and does not transfer the state license, shall mail or otherwise return the certification that the person holds a valid state license to the division.

(i) If the director has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this act, the director may require the applicant or licensee to furnish and maintain a bond in such form, amount and with such sureties as the director approves, but such amount shall be not less than \$5,000 nor more than \$20,000, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by a retail or wholesale buyer or seller of a vehicle by reason of any act by the licensee constituting grounds for suspension or revocation of the license. Every applicant or licensee who is or applies

to be a used vehicle dealer or a new vehicle dealer shall furnish and maintain a bond in such form, amount and with such sureties as the director approves, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by a retail or wholesale buyer or seller of a vehicle by reason of any act by the licensee in violation of any act which constitutes grounds for suspension or revocation of the license. The amount of such bond shall be as follows: (1) For any new applicant \$30,000; or (2) for any current licensee, \$15,000, until the renewal date of the existing bond, then \$30,000, except that on and after January 1, 2003, the amount of such bond shall be \$30,000. To comply with this subsection, every bond shall be a corporate surety bond issued by a company authorized to do business in the state of Kansas and shall be executed in the name of the state of Kansas for the benefit of any aggrieved retail or wholesale buyer or seller of a vehicle. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving 30 days' notice to the director, and thereafter the surety shall be relieved of liability for any breach of condition occurring after the effective date of cancellation. Bonding requirements shall not apply to first or second stage manufacturers, factory branches, factory representatives or salespersons. Upon determination by the director that a judgment from a Kansas court of competent jurisdiction is a final judgment and that the judgment resulted from an act in violation of this act or would constitute grounds for suspension, revocation, refusal to renew a license or administrative fine pursuant to K.S.A. 8-2411, and amendments thereto, the proceeds of the bond on deposit or in lieu of bond provided by subsection (j), shall be paid. The determination by the director under this subsection is hereby specifically exempted from the Kansas administrative procedure act (K.S.A. 77-501 through 77-549, and amendments thereto,) and the *Kansas judicial review* act for judicial review and civil enforcement of agency actions (K.S.A. 77-601 through 77-627, and amendments thereto). Any proceeding to enforce payment against a surety following a determination by the director shall be prosecuted by the judgment creditor named in the final judgment sought to be enforced. Upon a finding by the court in such enforcement proceeding that a surety has wrongfully failed or refused to pay, the court shall award reasonable attorney fees to the judgment creditor.

(j) An applicant or licensee may elect to satisfy the bonding requirements of subsection (i) by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas. On or after January 1, 2003, the amount of cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas deposited with the state treasurer shall be in an amount of no less than \$30,000. When negotiable bonds or negotiable certificates of deposit have been deposited with the state treasurer to satisfy the bonding requirements of subsection (i), such negotiable bonds or negotiable certificates of deposit shall remain on deposit with the state treasurer for a period of not less than two years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to termination of the licensee's license. In the event a licensee elects to deposit a surety bond in lieu of the negotiable bonds or negotiable certificates of deposit previously deposited with the state treasurer, the state treasurer shall not release the negotiable bonds or negotiable certificates of deposits until at least two years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to the date of the deposit of the surety bond. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area and any interest on those funds shall accrue to the benefit of the depositor.

(k) No license shall be issued by the director to any person to act as a new or used dealer, wholesaler, broker, salvage vehicle dealer, auction motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap

metal recycler, salvage vehicle pool, second stage manufacturer, first stage converter, second stage converter or distributor unless the applicant for the vehicle dealer's license maintains an established place of business which has been inspected and approved by the division. First stage manufacturers, factory branches, factory representatives, distributor branches, distributor representatives and lending agencies are not required to maintain an established place of business to be issued a license.

(l) Dealers required under the provisions of this act to maintain an established place of business shall own or have leased and use sufficient lot space to display vehicles at least equal in number to the number of dealer license plates the dealer has had assigned.

(m) A sign with durable lettering at least 10 inches in height and easily visible from the street identifying the established place of business shall be displayed by every vehicle dealer. Notwithstanding the other provisions of this subsection, the height of lettering of the required sign may be less than 10 inches as necessary to comply with local zoning regulations.

(n) If the established or supplemental place of business or lot is zoned, approval must be secured from the proper zoning authority and proof that the use complies with the applicable zoning law, ordinance or resolution must be furnished to the director by the applicant for licensing.

(o) An established or supplemental place of business, otherwise meeting the requirements of this act may be used by a dealer to conduct more than one business, provided that suitable space and facilities exist therein to properly conduct the business of a vehicle dealer.

(p) If a supplemental place of business is not operated on a continuous, year-round basis, the dealer shall give the department 15 days' notice as to the dates on which the dealer will be engaged in business at the supplemental place of business.

(q) Any vehicle dealer selling, exchanging or transferring or causing to be sold, exchanged or transferred new vehicles in this state must satisfactorily demonstrate to the director that such vehicle dealer has a bona fide franchise agreement with the first or second stage manufacturer or distributor of the vehicle, to sell, exchange or transfer the same or to cause to be sold, exchanged or transferred.

No person may engage in the business of buying, selling or exchanging new motor vehicles, either directly or indirectly, unless such person holds a license issued by the director for the make or makes of new motor vehicles being bought, sold or exchanged, or unless a person engaged in such activities is not required to be licensed or acts as an employee of a licensee and such acts are only incidentally performed. For the purposes of this section, engaged in the business of buying, selling or exchanging new motor vehicles, either directly or indirectly, includes: (1) Displaying new motor vehicles on a lot or showroom; (2) advertising new motor vehicles, unless the person's business primarily includes the business of broadcasting, printing, publishing or advertising for others in their own names; or (3) regularly or actively soliciting or referring buyers for new motor vehicles.

(r) No person may engage in the business of buying, selling or exchanging used motor vehicles, either directly or indirectly, unless such person holds a license issued by the director for used motor vehicles being bought, sold or exchanged, or unless a person engaged in such activities is not required to be licensed or acts as an employee of a licensee and such acts are only incidentally performed. For the purposes of this section, engaged in the business of buying, selling or exchanging used motor vehicles, either directly or indirectly, includes: (1) Displaying used motor vehicles on a lot or showroom; (2) advertising used motor vehicles, unless the person's business primarily includes the business of broadcasting, printing, publishing or advertising for others in their own names; or (3) regularly or actively soliciting buyers for used motor vehicles.

(s) The director of vehicles shall publish a suitable Kansas vehicle salesperson's manual. Before a vehicle salesperson's license is issued, the applicant for an original license or renewal thereof shall be required to pass a written examination based upon information in the manual.

(t) No new license shall be issued nor any license renewed to any person to act as a salvage vehicle dealer until the division has received evidence of compliance with the junkyard and salvage control act as set forth in K.S.A. 68-2201 et seq., and amendments thereto.

(u) On and after the effective date of this act, no person shall act as a broker in the advertising, buying or selling of any new or used motor vehicle. Nothing herein shall be construed to prohibit a person duly licensed under the requirements of this act from acting as a broker in buying or selling a recreational vehicle as defined by subsection (f) of K.S.A. 75-1212, and amendments thereto, when the recreational vehicle subject to sale or purchase is a used recreational vehicle which has been previously titled and independently owned by another person for a period of 45 days or more, or is a new or used recreational vehicle repossessed by a creditor holding security in such vehicle.

(v) Nothing herein shall be construed to prohibit a person not otherwise required to be licensed under this act from selling such person's own vehicle as an isolated and occasional sale.

Sec. 20. K.S.A. 8-2410 is hereby amended to read as follows: 8-2410.

(a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

- (1) Proof of financial unfitness of the applicant;
- (2) material false statement in an application for a license;
- (3) filing a materially false or fraudulent tax return as certified by the director of taxation;
- (4) negligently failing to comply with any applicable provision of this act or any applicable rule or regulation adopted pursuant thereto;
- (5) knowingly defrauding any retail buyer to the buyer's damage;
- (6) negligently failing to perform any written agreement with any buyer;
- (7) failure or refusal to furnish and keep in force any required bond;
- (8) knowingly making a fraudulent sale or transaction;
- (9) knowingly engaging in false or misleading advertising;
- (10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;
- (11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;
- (12) knowingly violating any law relating to the sale, distribution or financing of vehicles;
- (13) being a first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer, agent or any representative thereof, who has:
 - (A) Required any new vehicle dealer to order or accept delivery of any new motor vehicle, part or accessory of such part, equipment or any other commodity not required by law, or not necessary for the repair or service, or both, of a new motor vehicle which was not ordered by the new vehicle dealer;
 - (B) unfairly, without due regard to the equities of the vehicle dealer, and without just provocation, canceled, terminated or failed to renew a franchise agreement with any new vehicle dealer; or
 - (C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any vehicle dealer to involuntarily enter into any franchise agreement with such first or second stage manufacturer, factory branch, distributor, or any representative thereof, or to do any other act to a vehicle dealer which may be deemed a violation of this act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a franchise agreement existing between such parties;
- (14) being a first or second stage manufacturer, or distributor who for the protection of the buying public fails to specify in writing the delivery and preparation obligations of its vehicle dealers prior to delivery of new vehicles to new vehicle dealers. A copy of such writing shall be filed with the division by every licensed first or second stage manufacturer of vehicles and the contents thereof shall constitute the vehicle dealer's only responsibility for product liability as between the vehicle dealer and the first or second stage manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the first or second stage manufacturer shall constitute the product or warranty liability of the first or second stage manufacturer. The first or second stage man-

ufacturer shall reasonably compensate any authorized vehicle dealer for the performance of delivery and preparation obligation;

(15) being a first or second stage manufacturer of new vehicles, factory branch or distributor who fails to supply a new vehicle dealer with a reasonable quantity of new vehicles, parts and accessories, in accordance with the franchise agreement. It shall not be deemed a violation of this act if such failure is attributable to factors reasonably beyond the control of such first or second stage manufacturer, factory branch or distributor;

(16) knowingly used or permitted the use of dealer plates contrary to law;

(17) has failed or refused to permit an agent of the division, during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchase and sale of vehicles;

(18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;

(19) has failed or refused to surrender their dealer's license or dealer's plates to the division or its agent upon demand;

(20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;

(21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or salesperson;

(22) has cross-titled a title to any purchaser of any vehicle. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title;

(23) has changed the location of such person's established place of business or supplemental place of business prior to approval of such change by the division;

(24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";

(25) doing business as a vehicle dealer other than at the dealer's established or supplemental place of business, with the exception that dealers selling new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed 15 days;

(26) any violation of K.S.A. 8-126 *et seq.*, and amendments thereto, in connection with such person's operation as a dealer;

(27) any violation of K.S.A. 8-116, and amendments thereto;

(28) any violation of K.S.A. 21-3757, and amendments thereto;

(29) any violation of K.S.A. 79-1019, 79-3294 *et seq.*, or 79-3601 *et seq.*, and amendments thereto;

(30) failure to provide adequate proof of ownership for motor vehicles in the dealer's possession;

(31) being a first or second stage manufacturer who fails to provide the director of property valuation all information necessary for vehicle identification number identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles; or

(32) displaying motor vehicles at a location other than at the dealer's established place of business or supplemental place of business without obtaining the authorization required in K.S.A. 8-2435, and amendments thereto.

(b) In addition to the provisions of subsection (a), and notwithstanding the terms and conditions of any franchise agreement, including any policy, bulletin, practice or guideline with respect thereto or performance thereunder, no first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer or agent or any representative thereof, or any other person may do or cause to be done any of the following acts or practices referenced in this subsection, all of which are also declared to be a violation of the vehicle dealers and manufacturers licensing act, and amendments thereto:

(1) Through the use of a written instrument or otherwise, unreason-

ably fail or refuse to offer to its same line-make new vehicle dealers all models manufactured for that line-make, or unreasonably require a dealer to: (A) Pay any extra fee;

(B) purchase unreasonable advertising displays or other materials; or

(C) remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. The provisions of this subsection shall not apply to manufacturers of recreational vehicles;

(2) require a change in the capital structure of the new vehicle dealership, or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer and in accordance with uniformly applied criteria;

(3) discriminate unreasonably among competing dealers of the same line-make in the sale of vehicles or availability of incentive programs or sales promotion plans or other similar programs, unless justified by obsolescence;

(4) unless required by subpoena or as otherwise compelled by law:

(A) Require a new vehicle dealer to release, convey or otherwise provide customer information if to do so is unlawful, or if the customer objects in writing to doing so, unless the information is necessary for the first or second stage manufacturer of vehicles, factory branch or distributor to meet its obligations to consumers or the new vehicle dealer, including vehicle recalls or other requirements imposed by state or federal law; or

(B) release to any unaffiliated third party any customer information which has been provided by the dealer to the manufacturer.

(c) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(d) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its salespersons or representatives while acting as its agent.

(e) Any licensee or other person aggrieved by a final order of the director, may appeal to the district court as provided by the *Kansas judicial review act* for judicial review and civil enforcement of agency actions.

(f) The revocation or suspension of a first or second stage manufacturer's or distributor's license may be limited to one or more municipalities or counties or any other defined trade area.

Sec. 21. K.S.A. 2009 Supp. 8-2411 is hereby amended to read as follows: 8-2411. (a) When any licensee is found to be allegedly violating any of the applicable provisions of this act, or any order or rule and regulation adopted pursuant thereto, the director upon the director's own motion or upon complaint may commence a hearing against the licensee, which hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person who is found to have violated any applicable provisions of this act, any rule and regulation adopted pursuant thereto or any applicable order of the director shall be subject to a civil penalty of not less than \$50 nor more than \$1,000 for each violation or such person's license may be suspended or revoked or both civil penalty and license suspension or revocation, except that in addition to any civil penalty imposed pursuant to this subsection, the director shall suspend or revoke the license of any person who is found to have violated the provisions of K.S.A. 79-3601 et seq., and amendments thereto, by the failure to file returns and remit sales tax as required pursuant to K.S.A. 79-3607, and amendments thereto, or the provisions of K.S.A. 79-3294 et seq., and amendments thereto, by the failure to file returns and remit withholding tax as required pursuant to K.S.A. 79-3298, and amendments thereto, for three consecutive months.

(c) *Any party aggrieved by the decision of the director may appeal the same to the district court in accordance with the provisions of the Kansas judicial review act.*

Sec. 22. K.S.A. 2009 Supp. 8-2603 is hereby amended to read as follows: 8-2603. (a) No vehicle title service agent shall engage in business in this state without obtaining a license as required by this act.

(b) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such other information as may be deemed reasonable and pertinent, and shall be accompanied by the required fee. The application shall contain the name of the applicant, the address where business is to be conducted, the resident's address, if the applicant is an individual, the names and resident addresses of the partners of the applicant, if a partnership, the names and resident addresses of the principal officers of the applicant and the state of its incorporation, if a corporation. Every application under this section shall be verified by the applicant.

(c) All licenses shall be granted or refused within 30 days after the application is received by the director. If the division issues a license to an applicant, the applicant shall be authorized to engage in the business only at the address specified in the application. All licenses shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which they are granted. Applications for renewals received by the director after February 15 shall be considered as new applications. The license fees for each calendar year, or any part thereof, shall be \$75.

(d) A vehicle title service agent license is only valid to the person to which it is issued and cannot be transferred. Any purchaser or transferee of a vehicle title service agency must make application for a new vehicle title service license as provided by this act.

(e) The applicant or licensee shall furnish and maintain a bond in the amount of \$25,000, in such form and with such sureties as the director approves, conditioned upon the applicant or licensee complying with all the requirements for the lawful obtaining or receiving of certificates of title for vehicles and as indemnity for any loss sustained by reason of the acts of the person bonded when such acts constitute grounds for suspension or revocation of such person's license. Every bond shall be a corporate surety bond issued by a company authorized to do business in the state of Kansas and shall be executed in the name of the state of Kansas for the benefit of any aggrieved retail or wholesale buyer or seller of a vehicle. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving 30 days' notice to the director, and thereafter the surety shall be relieved of liability for any breach of condition occurring after the effective date of cancellation. Upon determination by the director that a judgment from a Kansas court of competent jurisdiction is a final judgment and that the judgment resulted from an act in violation of this act or would constitute grounds for suspension, revocation, refusal to renew a license or administrative fine pursuant to K.S.A. 2009 Supp. 8-2606, and amendments thereto, the proceeds of the bond on deposit or in lieu of bond provided by subsection (f), shall be paid. The determination by the director under this subsection is hereby specifically exempted from the Kansas administrative procedure act (K.S.A. 77-501 through 77-549, and amendments thereto,) and the *Kansas judicial review act for judicial review and civil enforcement of agency actions* (K.S.A. 77-601 through 77-627, and amendments thereto). Any proceeding to enforce payment against a surety following a determination by the director shall be prosecuted by the judgment creditor named in the final judgment sought to be enforced. Upon a finding by the court in such enforcement proceeding that a surety has wrongfully failed or refused to pay, the court shall award reasonable attorney fees to the judgment creditor.

(f) An applicant or licensee may elect to satisfy the bonding requirements of subsection (e) by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas. The amount of cash, negotiable bonds of the United States or of the state of Kansas or negotiable certificates of deposit of any bank organized under the laws of the United States or of

the state of Kansas deposited with the state treasurer shall be in an amount of \$25,000. When negotiable bonds or negotiable certificates of deposit have been deposited with the state treasurer to satisfy the bonding requirements of subsection (e), such negotiable bonds or negotiable certificates of deposit shall remain on deposit with the state treasurer for a period of not less than two years after the date of delivery of the certificate of title to the vehicle which was the subject of the last transaction in which the licensee engaged prior to termination of the licensee's license. In the event a licensee elects to deposit a surety bond in lieu of the negotiable bonds or negotiable certificates of deposit previously deposited with the state treasurer, the state treasurer shall not release the negotiable bonds or negotiable certificates of deposits until at least two years after the date of delivery of the certificate of title to the vehicle which was the subject of the last transaction in which the licensee engaged prior to the date of the deposit of the surety bond. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area and any interest on those funds shall accrue to the benefit of the depositor.

Sec. 23. K.S.A. 2009 Supp. 8-2605 is hereby amended to read as follows: 8-2605. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

- (1) Material false statement in an application for a license;
- (2) negligently failing to comply with any provision of this act or any rule and regulation adopted pursuant to this act;
- (3) failure or refusal to furnish and keep in force any required bond;
- (4) failure to comply with the laws of this state relating to certificates of title of vehicles;
- (5) has failed or refused to permit inspection of the licensee's records as provided under subsection (b) of K.S.A. 2009 Supp. 8-2604, and amendments thereto, during the licensee's regular business hours;
- (6) has failed or refused to surrender their license to the division or its agent upon demand;
- (7) has demonstrated that such person is not of good character and reputation in the community in which the licensee resides;
- (8) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a vehicle title service agent;
- (9) has changed the location of such person's established place of business prior to approval of such change by the division;
- (10) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";
- (11) has failed to prominently display license; or
- (12) has failed to comply with applicable Kansas tax laws.

(b) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(c) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its representatives while acting as its agent.

(d) Any licensee or other person aggrieved by a final order of the director, may appeal to the district court as provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 24. K.S.A. 2009 Supp. 8-2606 is hereby amended to read as follows: 8-2606. (a) When any licensee is found to be allegedly violating any of the applicable provisions of this act, or any order or rule and regulation adopted pursuant thereto, the director upon the director's own motion or upon complaint may commence a hearing against the licensee,

which hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person who is found to have violated any applicable provisions of this act, any rule and regulation adopted pursuant thereto or any applicable order of the director shall be subject to a civil penalty of not less than \$100 nor more than \$2,000 for each violation or such person's license may be suspended or revoked or both civil penalty and license suspension or revocation.

(c) Any party aggrieved by the decision of the director may appeal the same to the district court in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 25. K.S.A. 9-535 is hereby amended to read as follows: 9-535.

(a) The commissioner shall approve the application if the commissioner determines that the application favorably meets each and every factor prescribed in K.S.A. 9-534 and amendments thereto, the proposed acquisition is in the interest of the depositors and creditors of the Kansas bank or Kansas bank holding company which is the subject of the proposed acquisition and in the public interest generally. Otherwise, the application shall be denied.

(b) Within 15 days after the commissioner's approval or denial, the applicant shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~ An applicant who files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the board's expenses associated with conducting the appeal.

Sec. 26. K.S.A. 9-1111 is hereby amended to read as follows: 9-1111.

The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 9-1135, and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to subsection (25) of K.S.A. 9-1101, and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive deposits under subsection (28) of K.S.A. 9-1101, and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term "branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

(b) establishment of a new branch or relocation of an existing branch for eligible banks:

(1) After first applying for and obtaining the approval of the commissioner, an eligible bank incorporated under the laws of this state, may establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state;

(2) the application shall include the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it, the personnel and office facilities to be provided

at the proposed branch bank and other information the commissioner may require;

(3) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed branch bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(4) the application shall include proof of publication of notice that the applicant bank intends to file or has filed an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(5) upon receipt of the application, and following expiration of the comment period, the commissioner may hold a hearing in the county in which the applicant bank seeks to operate the branch bank. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner's designee, in support of or in opposition to the branch bank. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner;

(6) if the commissioner determines a public hearing is not warranted, the commissioner shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. If the commissioner finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the new branch or relocation shall be granted, otherwise, it shall be denied;

(7) within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the *Kansas judicial review act* for judicial review and civil enforcement of agency actions;

(c) establishment of a new branch or relocation of an existing branch for banks which do not meet the definition of "eligible bank":

(1) After first applying for and obtaining the approval of the state banking board, a bank incorporated under the laws of this state, which does not meet the definition of "eligible bank," may establish and operate one or more branch banks, or relocate an existing branch bank, anywhere within this state;

(2) an application under paragraph (1) of this subsection, to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

(3) the application shall include estimates of the annual income and

expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

(4) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(5) the application shall include proof of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(6) upon receipt of an application meeting the above requirements, and following the expiration of the comment period, within 60 days the state banking board may hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 10 days prior to the meeting of the board at which the application will be considered;

(7) the state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the application shall be granted, otherwise, the application shall be denied;

(8) any final action of the board approving or disapproving an application shall be subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions* upon the petition of the applicant or any adversely affected or aggrieved person who provided written comments during the specified comment period;

(d) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(e) branch banks which have been established and are being maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

(f) any state bank or national banking association may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(h) for purposes of this section, “remote service unit” means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include “online” computer terminals and “offline” automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of “offline” systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts;

(i) for purposes of this section, “eligible bank” means a state bank that meets the following criteria:

(1) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(2) meets the following three criteria for a well capitalized bank:

(A) Has a total risk based capital ratio of 10% or greater;

(B) has a tier one risk based capital ratio of 6% or greater; and

(C) has a leverage ratio of 5% or greater; and

(3) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner.

Sec. 27. K.S.A. 9-1135 is hereby amended to read as follows: 9-1135.

(a) Notwithstanding the requirements contained in K.S.A. 9-1111, and amendments thereto, a bank incorporated under the laws of this state may establish or operate a trust branch bank anywhere in this state.

(b) As used in this section, the term “trust branch bank” means any office, agency or other place of business located within this state, other than the place of business specified in the bank’s certificate of authority, the sole purpose of which is to exercise those trust powers granted to the bank by the commissioner pursuant to K.S.A. 9-1602, and amendments thereto. No trust branch bank established or operated pursuant to this section shall be authorized to receive deposits, pay checks or lend money without first applying for and obtaining approval as provided in K.S.A. 9-1111, and amendments thereto.

(c) No bank shall establish or operate a trust branch bank or relocate an existing trust branch bank until the bank has applied for and obtained approval from the commissioner as provided by this section.

(d) An application to establish a trust branch bank as provided in this section shall be in such form and contain such information as is required by the commissioner and shall include certified copies of the following documents:

(1) The written action taken by the board of directors of the bank

approving the proposed trust branch bank or the relocation of an existing trust branch bank;

(2) all other required regulatory approvals; and

(3) an affidavit of publication of notice of intent to file an application to establish or operate a trust branch bank or relocate an existing trust branch bank. The publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the proposed trust branch bank is to be located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant, the location of the proposed trust branch bank, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed trust branch bank. All comments and requests for public hearing shall be filed with the commissioner on or before the 30th day after the date the application is filed.

(e) A bank making application to the commissioner for approval of a trust branch bank pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The moneys in each such account shall be used to pay the expenses of the commissioner or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(f) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the proposed trust branch bank;

(2) the applicant bank's financial history and condition including the character, qualifications and experience of the officers employed by the bank; and

(3) whether the proposed trust branch bank can be established without undue injury to properly conducted existing banks, national banking associations and trust companies.

If the commissioner determines any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, the application shall be approved.

(g) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days after the date upon which the application was filed.

(h) If a written request for public hearing is filed, the commissioner shall hold a public hearing in a location determined by the commissioner within 30 days of the close of the comment period. Notice of the time, date and place of such hearing shall be published, by the applicant, in a newspaper of general circulation in the county where the proposed trust branch bank is to be located, not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(i) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner,

prior to expiration of the application period provided in this section, shall give written notice to the applicant of the commissioner's intent to extend the period. Such notice shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(j) Within 15 days after the date of the commissioner's approval or disapproval of the application, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The board shall fix a date for a hearing, which hearing shall be held within 45 days from the date the notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. Any party which files an appeal of the commissioner's determination to the board shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(k) When the commissioner determines that any bank domiciled in this state has established or is operating a trust branch bank in violation of the laws governing the operation of such bank, the commissioner shall give written notice to the bank of such determination. Within 15 days after receipt of such notification, the bank shall have the right to appeal in writing to the board the commissioner's determination. The board shall fix a date for hearing, which hearing shall be held within 45 days after the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive. If the bank does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the bank is in full compliance with the laws governing the operation of a trust branch bank.

Sec. 28. K.S.A. 9-1721 is hereby amended to read as follows: 9-1721.

(a) The commissioner shall be given at least 60 days' prior written notice of any proposed bank acquisition. If the commissioner does not issue an order disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the commissioner determines that any acquiring party has not furnished all the information required under K.S.A. 9-1722 and amendments thereto or that in the commissioner's judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action.

(b) The commissioner shall serve the acquiring party with an order of disapproval. The order shall provide a statement of the basis for the disapproval.

(c) Within 15 days after service of an order of disapproval, the acquiring party may request a hearing on the proposed acquisition with the board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act.

(d) Any disapproval by the board of a proposed acquisition is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Actual expense incurred by the commissioner or board in carrying

out any investigation that may be necessary or required by statute shall be paid by the person submitting the proposed acquisition.

Sec. 29. K.S.A. 9-1804 is hereby amended to read as follows: 9-1804.

(a) No bank or trust company incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without prior approval. Any such bank or trust company desiring to change its place of business shall file written application with the office of the state bank commissioner in such form and containing such information as the board and the commissioner shall require. Notice of the proposed relocation shall be published in a newspaper of general circulation in the county where the main bank or trust company is currently located and in the county to which the bank or trust company proposes to relocate. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank or trust company, the address of the proposed new location and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 calendar days after the date of the second publication. The applicant shall provide proof of publication to the commissioner.

(b) If the applicant is an eligible bank or an eligible trust company, the commissioner shall examine and investigate the application. If the commissioner determines:

(1) There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and

(2) the applicant bank's or trust company's financial history and condition is sound, the application shall be approved, otherwise, it shall be denied.

(c) Within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(d) If a bank does not meet the definition of an eligible bank or a trust company does not meet the definition of an eligible trust company, the state banking board shall examine and investigate the application. If the board determines:

(1) There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and

(2) the applicant bank's or trust company's financial history and condition is sound, the application shall be approved, otherwise, it shall be denied.

(e) Any final action of the board approving or disapproving an application shall be subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions* upon the petition of the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period.

(f) The expenses of such examination and investigation shall be paid by the bank or trust company which shall deposit with the commissioner a fee in an amount established by rules and regulations adopted by the commissioner. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be transferred to the bank commissioner fee fund.

(g) For purposes of this section:

(1) "Eligible bank" means a state bank that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform financial

institutions rating system as a result of its most recent federal or state examination;

(B) meets the following three criteria for a well capitalized bank:

- (i) Has a total risk based capital ratio of 10% or greater;
- (ii) has a tier one risk based capital ratio of 6% or greater; and
- (iii) has a leverage ratio of 5% or greater; and

(C) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner; and

(2) “eligible trust company” means a state chartered trust company that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform interagency trust rating system as a result of its most recent state examination; and

(B) is not subject to a cease and desist order, consent order, written agreement, memorandum of understanding or other administrative agreement with the office of the state bank commissioner.

Sec. 30. K.S.A. 2009 Supp. 9-1805 is hereby amended to read as follows: 9-1805. (a) If the board finds in accordance with this section that any current or former officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously fails to observe any legally made order of the commissioner or board, the board may take one or more of the following actions:

(1) Remove such officer or director; and

(2) prohibit such officer’s or director’s further participation in any manner in the conduct of the affairs of any state bank or trust company in Kansas.

(b) Prior to removing such officer or director, or prohibiting such officer’s or director’s participation in the conduct of the affairs of any state bank or trust company in Kansas, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act.

(c) The board may recess or continue any hearing from time to time. If upon the conclusion of such hearing the board determines that the officer or director has been dishonest, reckless or incompetent in performing duties as such an officer or director, or has willfully or continuously failed to comply with any legally made order of the commissioner or board, the board may order the officer’s or director’s office forfeited and vacated and prohibit such officer’s or director’s further participation in the conduct of the affairs of any state bank or trust company in Kansas. The board shall mail a copy of its removal order to the bank or trust company which such officer or director was serving. If the order prohibits such officer’s or director’s further participation in the conduct of the affairs of any state bank or trust company in Kansas, such order shall be published in the Kansas register within 30 days after such order becomes final.

(d) During the time from and after any legally made order by the commissioner and upheld by the board, or order made by the board, and not complied with by any officer or director the board may place a special deputy in the bank up to and until the final disposition of the order by compliance or final disposition by order of the district court.

(e) Any action of the board pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. If on review the court upholds an order of the board removing an officer or director or if review of such an order is not sought within the time allowed by law, the office of the officer or director shall be forfeited and vacated by law and such office shall then be filled in accordance with existing statutes and bylaws by another person or persons.

Sec. 31. K.S.A. 9-2107 is hereby amended to read as follows: 9-2107.

(a) As used in this section:

(1) “Contracting trustee” means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in

Kansas that has been granted trust authority by the comptroller of the currency under 12 USC 92a, or any bank that has been granted trust authority or any trust company, regardless of where such bank or trust company is located, and which is controlled, as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) “originating trustee” means any trust company, bank, national banking association, savings and loan association or savings bank which has trust powers and its principal place of business is in this state and which places or transfers any fiduciary responsibility to a contracting trustee as provided in this section;

(3) “financial institution” means any bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1), and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders, which pertain to the affected fiduciary accounts;

(2) the originating trustee is absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and

(2) to engage the originating trustee as the agent of the contracting trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the contracting trustee.

(e) Any contracting trustee may enter into an agreement with a financial institution providing that the contracting trustee may establish a trust service desk as authorized by subsection (d) in the offices of such financial institution and which provides such financial institution, on a disclosed basis to customers, may act as the agent of contracting trustee for purposes of providing administrative services and advertising incident to the fiduciary services to be performed by the contracting trustee.

(f) No activity authorized by subsections (b) through (e) shall be conducted by any contracting trustee, originating trustee or financial institution until an application for such authority has been submitted to and approved by the commissioner. The application shall be in the form and contain the information required by the commissioner, which shall at a minimum include certified copies of the following documents:

(1) The agreement;

(2) the written action taken by the board of directors of the originating trustee or financial institution approving the agreement;

(3) all other required regulatory approvals;

(4) an affidavit of publication of notice of intent to file the application

with the commissioner. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the principal office of the originating trustee or financial institution is located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant contracting trustee, the originating trustee or financial institution, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application, and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed agreement. All comments and requests for public hearing shall be filed with the commissioner on or before the 30th day after the date the application is filed; and

(5) a certification by the parties to the agreement that written notice of the proposed substitution was sent by first-class mail to each co-fiduciary, each surviving settlor of a trust, each ward of a guardianship, each person who has sole or shared power to remove the originating trustee as fiduciary and each adult beneficiary currently receiving or entitled to receive a distribution of principle or income from a fiduciary account affected by the agreement, and that such notice was sent to each such person's address as shown in the originating trustee's records. An unintentional failure to give such notice shall not impair the validity or effect of any such agreement, except an intentional failure to give such notice shall render the agreement null and void as to the party not receiving the notice of substitution.

(g) A contracting trustee making application to the commissioner for approval of any agreement pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The money in each such account shall be used to pay the expenses of the commissioner, or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(h) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

- (1) The reasonable probability of usefulness and success of the contracting trustee;
- (2) the financial history and condition of the contracting trustee including the character, qualifications and experience of the officers employed by the contracting trustee; and
- (3) whether the contracting agreement will result in any undue injury to properly conducted existing banks, national banks and trust companies.

If the commissioner shall determine any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, then the application shall be approved.

(i) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(j) If a written request for public hearing is filed, the commissioner shall hold within 30 days of the close of the comment period, a public hearing in a location determined by the commissioner. Notice of the time, date and place of such hearing shall be published by the applicant in a newspaper of general circulation in the county where the originating trustee or financial institution is located, not less than 10 nor more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons may present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after con-

sideration of the application and evidence gathered during the commissioner's investigation.

(k) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period provided for by this section, shall give written notice to each party to the agreement of the commissioner's intent to extend the period which shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(l) Within 15 days of the date of the commissioner's approval or denial, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(m) When the commissioner determines that any contracting trustee domiciled in this state has entered into a contracting agreement in violation of the laws governing the operation of such contracting trustee, the commissioner shall give written notice to the contracting trustee and the originating trustee or financial institution of such determination. Within 15 days after receipt of such notification, the contracting trustee and originating trustee or financial institution shall have the right to appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which shall be held within 45 days after the date of the appeal and shall be conducted in accordance with the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination. The decision of the board shall be final and conclusive. If the contracting trustee does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the contracting trustee, originating trustee and financial institution are in full compliance with the laws governing the operation of a contracting trustee and originating trustee or financial institution.

(n) Any party entitled to receive a notice under subsection (f)(5) may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the originating trustee has its principal office, seeking to remove any contracting trustee substituted or about to be substituted as fiduciary pursuant to this section. Unless the contracting trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interest of the petitioner and all other parties concerned and shall fashion such relief as it deems appropriate in the circumstances, including the awarding of reasonable attorney fees. The right to file a petition under this subsection shall be in addition to any other rights to remove fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship. If the removal of the fiduciary is prompted solely as a result of the contracting agreement, any reasonable cost associated with such removal and transfer, not to exceed \$200 per account, shall be paid by the originating trustee or financial institution entering into the agreement.

Sec. 32. K.S.A. 9-2108 is hereby amended to read as follows: 9-2108. It is unlawful for any trust company to establish or operate a trust service office or relocate an existing trust service office except as provided in this act.

(a) As used in this section: “Trust service office” means any office, agency or other place of business located within this state other than the place of business specified in the trust company’s certificate of authority, at which the powers granted to trust companies under K.S.A. 9-2103, and amendments thereto, are exercised. For the purposes of this section, any activity in compliance with K.S.A. 9-2107, and amendments thereto, does not constitute a trust service office.

(b) After first applying for and obtaining the approval of the commissioner under this section, one or more trust service offices may be established or operated in any city within this state by a trust company incorporated under the laws of this state.

(c) An application to establish or operate a trust service office or to relocate an existing trust service office shall be in such form and contain such information as required by the commissioner and shall include certified copies of the following documents:

(1) The written action taken by the board of directors of the trust company approving the establishment or operation of the proposed trust service office or the proposed relocation of the trust service office;

(2) all other required regulatory approvals; and

(3) an affidavit of publication of notice of intent to file an application to establish or operate a trust service office or relocate an existing trust service office. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city where the proposed trust service office is to be located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant, the location of the proposed trust service office, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application and a notice of the public’s right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed trust service office. All comments and requests for public hearing shall be filed with the commissioner on or before the 30th day after the date the application is filed.

(d) A trust company making application to the commissioner for approval of a trust service office under this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The moneys in each such account shall be used to pay the expenses of the commissioner or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(e) Upon filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the proposed trust service office;

(2) the applicant trust company’s financial history and condition including the character, qualifications and experience of the officers employed by the trust company; and

(3) whether the proposed trust service office can be established without undue injury to properly conducted existing banks, national banking associations and trust companies. If the commissioner determines any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, the application shall be approved.

(f) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(g) If a written request for public hearing is filed, the commissioner

shall hold a public hearing in a location determined by the commissioner within 30 days of the close of the comment period. Notice of the time, date and place of the hearing shall be published by the applicant in a newspaper of general circulation in the county where the proposed trust service office is to be located, not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(h) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period as provided in this section, shall give written notice to the applicant of the commissioner's intent to extend the period and such notice shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(i) Within 15 days of the date after the commissioner's approval or disapproval of the application, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination, by filing a notice of appeal with the commissioner. The state banking board shall fix a date for a hearing, which hearing shall be held within 45 days from the date such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Action of the board pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(j) When the commissioner determines that a trust company domiciled in this state has established or is operating a trust service office in violation of the laws governing the operation of such trust company, the commissioner shall give written notice to the trust company of such determination. Within 15 days after receipt of such notification, the trust company may appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which hearing shall be held within 45 days from the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive. If the trust company does not appeal to the state banking board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the trust company is in full compliance with the laws governing the operation of a trust service office.

Sec. 33. K.S.A. 12-16,106 is hereby amended to read as follows: 12-16,106. (a) A local human relations commission authorized by ordinance to award compensatory damages in the Kansas act against discrimination, in a discrimination case may secure enforcement of any final order of such commission, or where authorized by ordinance, the commission's director may secure enforcement of any final order of such commission,

in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ in amounts not to exceed any limitations prescribed in the Kansas act against discrimination. The evidence presented to the commission or director, together with the commission's or director's findings and the order issued thereon, shall be certified by the commission or director to the district court as the commission's or director's return. No order of the commission or director shall be superseded or stayed during the proceeding on review unless the district court so directs.

(b) (1) Any action of the commission or director is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ except: (A) Determination by the commission or director that no probable cause exists for crediting the allegations of a complaint brought before such commission or director; (B) the commission or director, in addition to those persons specified by K.S.A. 77-611 and amendments thereto, shall have standing to bring an action for review; and (C) on review, the court shall hear the action by trial *de novo* with or without a jury in accordance with the provisions of K.S.A. 60-238 and amendments thereto, and the court, in the court's discretion, may permit any party or the commission or director to submit additional evidence on any issue. The review shall be heard and determined by the court as expeditiously as possible. After hearing, the court may affirm the adjudication. If the adjudication by the commission or director is not affirmed, the court may set aside or modify the adjudication, in whole or in part, or may remand the proceedings to the commission or director for further disposition in accordance with the order of the court.

(2) The commission's or director's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of judicial review of the order. The review shall be heard on the record without requirement of printing.

(3) The commission or director shall be deemed a party to the review of any order by the court.

Sec. 34. K.S.A. 2009 Supp. 12-5325 is hereby amended to read as follows: 12-5325. The secretary shall administer the provisions of the wireless enhanced 911 act and shall be responsible for administration and management of the fund. The secretary is hereby authorized to:

(a) Enter into binding commitments for the provision of grants in accordance with the provisions of this act;

(b) review applications of eligible municipalities for grants and select the projects for which grants will be made available; and

(c) adopt rules and regulations necessary for effectuation of the provisions of this act, including, but not limited to, assessing civil penalties.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary or the secretary's duly authorized agent to a wireless carrier. Such order shall state the violation, the penalty to be imposed and the right of such wireless carrier to appeal to the secretary. Any such wireless carrier, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(e) Any wireless carrier aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(f) Any civil penalty recovered pursuant to this section shall be deposited with the local collection point administrator and subsequently routed back to the corresponding PSAP and shall be used solely for those expenses allowed by this act.

Sec. 35. K.S.A. 2009 Supp. 12-5354 is hereby amended to read as follows: 12-5354. (a) The secretary shall administer the provisions of the VoIP enhanced 911 act. The secretary is hereby authorized to adopt rules and regulations necessary for effectuation of the provisions of this act, including, but not limited to, assessing civil penalties.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary or the secretary's duly authorized

agent to a VoIP provider. Such order shall state the violation, the penalty to be imposed and the right of such VoIP provider to appeal to the secretary. Any such VoIP provider, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any VoIP provider aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(d) Any civil penalty recovered pursuant to this section shall be deposited with the local collection point administrator and subsequently routed back to the corresponding PSAP and shall be used solely for those expenses allowed by this act.

Sec. 36. K.S.A. 2009 Supp. 16a-6-108 is hereby amended to read as follows: 16a-6-108. (1) If the administrator determines after notice and opportunity for a hearing that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation, order or administrative interpretation hereunder, the administrator by order may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the administrator will carry out the purposes of this act.

(2) If the administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (1), the administrator may issue an emergency cease and desist order. Such order shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order the administrator shall promptly notify the person subject to the order that it has been entered, of the reasons and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusion of law vacate, modify or make permanent the order.

(3) If the administrator reasonably believes that a person has violated this act or a rule and regulation, order or administrative interpretation of the administrator under this act, the administrator, in addition to any specific power granted under this act, after notice and hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may require any or all of the following:

- (a) Censure the person if the person is licensed under this act;
- (b) issue an order against an applicant, licensed person, residential mortgage loan originator registrant or other person who knowingly violates this act or a rule and regulation, order or administrative interpretation of the administrator under this act, imposing a civil penalty up to a maximum of \$5,000 for each violation. If any person is found to have knowingly or willfully violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the administrator may impose an additional penalty not to exceed \$5,000 for each such violation;
- (c) revoke or suspend the person's license or registration or bar the person from subsequently applying for a license or registration under this act; or
- (d) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation.

(4) Any person aggrieved by a final order of the administrator may obtain a review of the order in accordance with the provisions of the

Kansas judicial review act for judicial review and civil enforcement of agency actions.

Sec. 37. K.S.A. 16a-6-414 is hereby amended to read as follows: 16a-6-414. Any action of the administrator pursuant to the uniform consumer credit code is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief or trial *de novo* provided by law. A preliminary, procedural or intermediate action or ruling of the administrator is immediately reviewable if review of the final decision of the administrator would not provide an adequate remedy.

Sec. 38. K.S.A. 17-12a609 is hereby amended to read as follows: 17-12a609. A final order issued by the administrator under this act is subject to judicial review in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 39. K.S.A. 2009 Supp. 17-2221a is hereby amended to read as follows: 17-2221a. (a) After first applying for and obtaining the approval of the administrator, a credit union incorporated under the laws of this state, may establish and operate one or more branches or relocate an existing branch, in accordance with its stated field of membership as approved by the administrator. The application shall include proof of publication of notice that the applicant credit union intends to file or has filed an application to establish a branch or relocate an existing branch. The notice shall be published in a newspaper of general circulation in the county where the applicant credit union proposes to locate the branch. The notice shall be in the form prescribed by the administrator and at a minimum shall contain the name and address of the applicant credit union and the location of the proposed branch. The notice shall be published on the same day for two consecutive weeks.

(b) (1) If the credit union has a current CAMEL rating of 3, 4 or 5, or the recognized regulatory equivalent thereof as defined in rules and regulations promulgated by the administrator, the application shall also contain a solicitation for written comments and provide for a comment period of not less than 10 days after the date of the second publication. Upon receipt of the application and following expiration of the comment period, the administrator may hold a hearing in the county in which the applicant credit union seeks to operate the branch. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant credit union proposes to locate the branch, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the administrator. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the administrator, or the administrator's designee, in support of or in opposition to the branch. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the administrator.

(2) If the administrator determines a public hearing is not warranted, the administrator shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the administrator shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the administrator's investigation. The period for consideration of the application may be extended if the administrator determines the application presents a significant supervisory concern. If the administrator finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch;

(B) the proposed branch is in accordance with the applicant's field of membership approved by the administrator as set forth in K.S.A. 17-2205 and amendments thereto; and

(C) the applicant credit union's financial condition is sound, including an analysis of the loan portfolio to ensure that the applicant credit union is not exceeding the limitation on member business loans provided in 12 U.S.C. Section 1757a, and amendments thereto, the new branch or relocation shall be granted, otherwise, it shall be denied.

(3) Within 15 days after any final action of the administrator approving or disapproving an application, the applicant, or any adversely affected

or aggrieved person who provided written comments during the specified comment period, may request a hearing with the administrator. Upon receipt of a timely request, the administrator may conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the administrator is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(c) For purposes of this section:

(1) “Administrator” shall have the meaning ascribed to it in K.S.A. 17-2233 and amendments thereto.

(2) “Branch” means any office, agency or other place of business located within this state, other than the place of business specified in the credit union’s certificate of organization, at which deposits are received, checks paid, or money lent.

(d) The administrator may adopt rules and regulations necessary to implement this section.

Sec. 40. K.S.A. 17-5225d is hereby amended to read as follows: 17-5225d. Any action of the board approving or disapproving such application is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 41. K.S.A. 25-4185 is hereby amended to read as follows: 25-4185. Any person aggrieved by any order of the commission pursuant to this act may appeal such order in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 42. K.S.A. 2009 Supp. 25-4713 is hereby amended to read as follows: 25-4713. (a) If there has been no hearing, the secretary of state shall review the record and determine whether a violation of title III has been established by a preponderance of evidence. Pursuant to paragraph (3) of subsection (c) of K.S.A. 77-603, the determination of the secretary of state shall be final and shall not be subject to appeal pursuant to the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(b) At the conclusion of any hearing, the secretary of state shall determine whether a violation of title III has been established by a preponderance of evidence. The determination of the secretary of state shall be final and shall not be subject to the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(c) If the complaint is not timely filed or if the secretary of state determines that a violation has not occurred or that there is insufficient evidence to establish a violation, the secretary of state shall dismiss the complaint.

(d) The secretary of state shall explain in a written decision the reasons for the determination and for any remedy selected.

(e) Except as specified in K.S.A. 2009 Supp. 25-4715, and amendments thereto, unless the complainant consents in writing to an extension of time, the final determination of the secretary of state shall be issued within 90 days after the complaint is filed. The final determination shall be mailed to the complainant and each respondent and published on the secretary of state website.

(f) If the secretary of state cannot make a final determination within 90 days after the complaint was filed, or within any extension to which the complainant consents, the complaint shall be referred for final resolution under K.S.A. 2009 Supp. 25-4715, and amendments thereto. The record compiled pursuant to K.S.A. 2009 Supp. 25-4708, and amendments thereto, shall be made available for use under K.S.A. 2009 Supp. 25-4715, and amendments thereto.

Sec. 43. K.S.A. 2009 Supp. 25-4715 is hereby amended to read as follows: 25-4715. (a) If the secretary of state does not render a final determination within 90 days after the complaint is filed, or within any extension to which the complainant consents, the complaint shall be resolved under this section.

(b) Within five days after a final determination was due, the secretary of state shall designate the name of an arbitrator to resolve the complaint. The designation shall be in writing and provided to both the complainant and respondent.

(c) The arbitrator may review the record compiled in connection with

the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence.

(d) The arbitrator shall issue a written resolution within 10 days after the secretary of state's determination was due. The final resolution of the arbitrator shall be mailed to the secretary of state, the complainant, and each respondent, and published on the secretary of state website. Pursuant to paragraph (3) of subsection (c) of K.S.A. 77-603, and amendments thereto, the determination of the arbitrator under this section shall be final and shall not be subject to review under the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 44. K.S.A. 2009 Supp. 31-134 is hereby amended to read as follows: 31-134. (a) Any rules and regulations adopted by the state fire marshal under this act shall comply with the provisions of K.S.A. 77-415 et seq., and amendments thereto, except that:

(1) In addition to the method of providing notice of the public hearing prescribed by K.S.A. 77-421, and amendments thereto, such notice shall be published three times in at least two newspapers of general circulation, with the last published notice to appear not less than 15 days prior to the public hearing.

(2) The state fire marshal shall make available for general distribution upon request copies of any nationally recognized code adopted by reference, marked so as to indicate the provisions thereof which have been so adopted. The state fire marshal may charge a fee for the copies in an amount equal to the cost of the copies and their distribution. Upon collection of any such fees, the state fire marshal shall remit to the state treasurer such fees in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. The state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall credit 20% of each such deposit to the state general fund and shall credit the remainder of each such deposit to the fire marshal fee fund.

(3) In addition to the filing requirements of K.S.A. 77-416, and amendments thereto, the state fire marshal shall publish all such rules and regulations and make the same available for distribution to the general public upon request, but the fire marshal shall not be required to republish the provisions of any nationally recognized code adopted by reference if such provisions are made available for general distribution upon request to the fire marshal's office.

(b) The rules and regulations adopted by the state fire marshal under authority of this act shall be known and may be cited as the Kansas fire prevention code. Such rules and regulations shall have uniform force and effect throughout the state. No municipality shall enact or enforce any ordinance, resolution or rule or regulation inconsistent therewith, except that nothing in this act shall be construed to impair the power of any municipality to regulate the use of land by zoning or fire district regulations or to prohibit or regulate the sale, handling, use or storage of fireworks within its boundaries. Whenever a question shall arise as to whether another state statute or an enactment of a municipality is inconsistent with the provisions of the fire prevention code, it shall be the duty of the state fire marshal to make such determination after a hearing thereon with all interested parties conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the state fire marshal pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 45. K.S.A. 31-142 is hereby amended to read as follows: 31-142. Any action of the state fire marshal pursuant to K.S.A. 31-140 and amendments thereto is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 46. K.S.A. 2009 Supp. 31-144 is hereby amended to read as follows: 31-144. (a) As used in this act, "school building" means any building or structure operated or used for any purpose by, or located upon the land of, any school district, community college district, area vocational school, area vocational-technical school, institution under the state board of regents or any private or nonpublic school, college or university, whether or not operated for profit. The term school building does not include within its meaning any single-family dwelling or duplex con-

structed as part of a vocational education program or construction trades class if such single-family dwelling or duplex is to be sold, after its construction, for private use.

(b) All school buildings shall be inspected at least once each year. In all cities of the first and second class in which there is a full-time fire chief or full-time fire inspector, the inspection of the school buildings shall be conducted by such chief or inspector. The chief or inspector shall report the findings from the inspection to the state fire marshal within 30 days after such inspection. In all other cases, school buildings shall be inspected by the state fire marshal or the fire marshal's authorized assistants.

(c) The state fire marshal shall order the governing body having control of any school building or facility thereof to correct any condition in such building or facility which is in violation of this act, or any condition which the fire marshal deems dangerous, or which in any way prevents a speedy exit from such building. After any such order is rendered, such governing body shall make the changes required to comply therewith. A board of education of any school district is hereby authorized to make expenditures from its general fund or capital outlay fund to comply with such order, or the board may issue no-fund warrants in such amounts as are necessary to pay expenses incurred in complying with such order. Such no-fund warrants shall be issued, registered, paid and redeemed and bear interest as provided by K.S.A. 79-2940, and amendments thereto, except that the approval of the state court of tax appeals shall not be required. Such warrants shall recite that they are issued by the board of education of the school district under authority of this act. Any board of education issuing warrants hereunder shall make a tax levy at the same time as other tax levies are made, after such warrants are issued, sufficient to pay such warrants and the interest thereon.

(d) Whenever a board of education receives an order from the state fire marshal pursuant to subsection (c), the board, in lieu of repairing or remodeling the school building or facility as ordered by the state fire marshal, may close such building or facility as an attendance center. Whenever any board of education finds that any such order of the state fire marshal involves a cost in excess of that which the board of education finds the school district can afford, or that the changes ordered are unwarranted or unnecessary, the board may petition for review of such order in the district court of the home county of such school district. Upon receiving such petition, the district court shall appoint three disinterested commissioners, one of whom shall be a licensed architect. The commissioners shall inspect the building or facility affected by the order and report to the court its findings of fact as to the necessity for the improvements or changes ordered by the state fire marshal, together with the estimated cost of each such improvement or change and such other recommendations as the commissioners deem advisable. Upon receiving such findings of fact and recommendations, or any other evidence relating to the petition for review, the court shall enter its order affirming, reversing or modifying the order of the state fire marshal. Such order of the court may be reviewed by the appellate courts in the same manner as other orders and judgments of the district court may be reviewed.

(e) Except as provided in subsection (d), any action of the state fire marshal pursuant to this section is subject to review in accordance with the *Kansas judicial review act* for judicial review and civil enforcement of agency actions.

Sec. 47. K.S.A. 2009 Supp. 31-159 is hereby amended to read as follows: 31-159. (a) In addition to any other penalty provided by law, the state fire marshal, upon finding that any person has violated the provisions of the Kansas fire prevention code, may impose a penalty not to exceed \$1,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed.

(b) No penalty shall be imposed pursuant to this section except upon the written order of the state fire marshal to the person who committed the violation. The order shall state the violation, the penalty imposed and the right to appeal to the state fire marshal. Any such person, within 30 days after service of such order, may make written request to the fire marshal for a hearing thereon. The fire marshal shall conduct a hearing

in accordance with the provisions of the Kansas administrative procedure act within 30 days after receipt of such request.

(c) Any person aggrieved by any order issued pursuant to this section may appeal such order in accordance with the provisions of the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions.~~

(d) All moneys received from penalties imposed pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(e) If a fire safety inspection is required to meet licensing requirements of a state agency, the state fire marshal, before imposing a penalty pursuant to this section, shall make written request to the state licensing agency to take appropriate action to require compliance with the Kansas fire prevention code. If the state licensing agency fails to take such action within 60 days after receipt of the state fire marshal's notice, the state fire marshal may impose a penalty as provided by this section.

Sec. 48. K.S.A. 2009 Supp. 31-606 is hereby amended to read as follows: 31-606. (a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, that do not meet the performance standard of K.S.A. 2009 Supp. 31-603, and amendments thereto, are not listed on the directory as required by K.S.A. 2009 Supp. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 2009 Supp. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed \$100,000 during any thirty-day period.

(b) A retail dealer or vending machine operator who knowingly sells or offers to sell cigarettes that are not listed on the directory as required by K.S.A. 2009 Supp. 31-604, and amendments thereto, or are not marked in accordance with K.S.A. 2009 Supp. 31-605, and amendments thereto, shall be subject to a civil penalty not to exceed \$500 for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer or vending machine operator exceed \$25,000 for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to K.S.A. 2009 Supp. 31-604, and amendments thereto, shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

(d) Any person violating any other provision in this act shall be subject to a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense subject to a civil penalty not to exceed \$5,000 for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by K.S.A. 2009 Supp. 31-603, and amendments thereto, shall be considered contraband and subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed. Prior to the destruction of any cigarette forfeited pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in the district court for a violation of this act, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this act or of rules or regulations adopted under this act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal, director, or attorney general shall discover any cigarettes that have not been marked in the manner required by K.S.A. 2009 Supp. 31-605, and amendments thereto, or for which a certification has not been filed as required by K.S.A. 2009 Supp. 31-604,

and amendments thereto, such personnel are hereby authorized and empowered to seize and take possession of such cigarettes with or without process or warrant. Such cigarettes shall be turned over to the division of taxation, and shall be subject to forfeiture proceedings. Cigarettes seized pursuant to this section shall be destroyed. Prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(h) Any action taken pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(i) The provisions of this section shall take effect and be in force from and after July 1, 2009.

Sec. 49. K.S.A. 2009 Supp. 32-950 is hereby amended to read as follows: 32-950. Any action of the secretary pursuant to K.S.A. 32-949, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ upon the petitioner's filing, with the clerk of the reviewing court, a bond with a sufficient surety, conditioned on the payment of all costs of the review if the decision of the secretary is sustained.

Sec. 50. K.S.A. 2009 Supp. 32-1114 is hereby amended to read as follows: 32-1114. (a) No dealer of vessels shall be eligible to obtain dealer certificates of number pursuant to K.S.A. 32-1112, and amendments thereto, unless such dealer holds a dealer's license issued by the secretary. The application for a dealer's license shall be made to the secretary and shall contain such information as the secretary deems reasonable and pertinent for the enforcement of the provisions of this section. The application shall be accompanied by the fee required under K.S.A. 32-1172, and amendments thereto.

(b) A dealer's license shall be granted or refused within 30 days after the application is received by the secretary. The license shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which the license is granted. Any application for renewal received by the secretary after February 15 shall be considered as a new application.

(c) The secretary may deny, suspend, revoke or refuse renewal of a person's dealer's license if the person has:

(1) Made a material false statement in an application for a dealer's license;

(2) filed a materially false or fraudulent tax return as certified by the director of taxation;

(3) knowingly used or permitted the use of a dealer certificate of number contrary to law;

(4) failed to notify the secretary within 10 days of any dealer certificate of number that has been lost, stolen, mutilated or destroyed; or

(5) has failed or refused to surrender the dealer's license or dealer's certificates of number to the secretary or the secretary's agent upon demand.

(d) The secretary may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(e) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any of the licensee's salespersons, representatives or employees while acting as the licensee's agent.

(f) Any licensee or other person aggrieved by a final order of the secretary pursuant to this section may appeal to the district court as provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 51. K.S.A. 2009 Supp. 36-509 is hereby amended to read as

follows: 36-509. (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary or a presiding officer from the office of administrative hearings may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

(b) Upon completion of the hearing, the secretary may affirm, rescind or modify the order denying, suspending or revoking the applicant's license. Any person aggrieved by any such decision of the secretary may appeal to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 52. K.S.A. 2009 Supp. 36-515b is hereby amended to read as follows: 36-515b. (a) Any person who violates any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The secretary of agriculture, upon a finding that a person has violated any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, may impose a civil penalty within the limits provided in this section upon such person, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary of agriculture to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order of the secretary and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the food service and lodging act.

Sec. 53. K.S.A. 39-7,143 is hereby amended to read as follows: 39-7,143. (a) Subject to subsection (b), an administrative subpoena or order whose effect has not been stayed shall be enforceable pursuant to the civil enforcement provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~, K.S.A. 77-601 *et seq.* and amendments thereto, from the date of the subpoena's issuance or the order's entry.

(b) A subpoena issued pursuant to K.S.A. 39-7,144 and amendments thereto or an order to restrict transfer or to verify information entered pursuant to K.S.A. 39-7,150 and amendments thereto shall not be enforceable more than two years after the date of issuance or entry, as shown on the face of the subpoena or order.

Sec. 54. K.S.A. 39-7,144 is hereby amended to read as follows: 39-7,144. (a) In any title IV-D case, the secretary may issue a subpoena pursuant to this section to obtain information about the responsible parent's whereabouts or finances if the information is needed to establish, modify or enforce a support order. The subpoena shall require the person to whom it is directed to produce a copy of the records designated in the subpoena or, if applicable, to complete a form furnished pursuant to subsection (c). At least 14 days shall be allowed for compliance with the

subpoena. A subpoena issued pursuant to this section shall be subject to defenses which would apply if the subpoena had been issued by a court of this state.

(b) A subpoena issued pursuant to this section shall be served only by personal service or registered mail, return receipt requested.

(c) The secretary may furnish with the subpoena a form requesting specific information from the records of the person to whom the subpoena is directed. The person may elect to furnish the copy of the designated records or to complete the form in full. If the person completes the form in full and returns it to the secretary's authorized agent by mail or otherwise within the time allowed, it shall be sufficient compliance with the subpoena.

(d) Except as otherwise provided in this subsection or subsection (c), the person to whom a subpoena is directed shall comply with the subpoena by delivering to the secretary's authorized agent by mail or otherwise a sworn statement and a true and correct copy of the records designated in the subpoena. The sworn statement shall certify that the copy delivered by the person is a true and correct copy of the records designated in the subpoena. When more than one person has custody of the records or has knowledge of the facts required to be stated in the sworn statement, more than one sworn statement may be made.

If the person has none of the records designated in the subpoena, or only part thereof, the person shall so state in the sworn statement and shall send a copy of those records of which the person has custody.

(e) Before the time specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may request: (1) An administrative hearing to review all or part of the subpoena by complying with procedures established by the secretary for requesting such a review; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. The person shall comply with any portion of the subpoena for which review is not requested. If the subpoena is served by mail, the time for requesting review shall be extended by three days. If the request for review is made within the time allowed, the effect of the subpoena shall be stayed pending resolution of the review. Upon request, the presiding officer may limit the stay to the matters under review.

(f) Except as otherwise provided in this subsection, a subpoena issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601, *et seq.*, and amendments thereto, after the time for compliance with the subpoena has expired. A subpoena issued pursuant to this section shall not be enforceable more than two years after the date of issuance shown on the face of the subpoena.

Sec. 55. K.S.A. 39-7,145 is hereby amended to read as follows: 39-7,145. (a) This section shall not apply if an action to establish the father's duty of support on behalf of the child is pending before any tribunal. As used in this section, "mother" means the natural mother of the child whose parentage is in issue.

(b) Except as otherwise provided in subsection (d), genetic tests may be ordered by the secretary if the alleged father consents and the necessary persons are available for testing. Except as otherwise provided in subsection (e), the secretary shall pay the costs of genetic tests, subject to recoupment from the father if paternity is established. For purposes of this section, a person receiving title IV-D services is not available for testing if a claim for good cause not to cooperate under title IV-D is pending or has been determined in the person's favor or if the person ceases to receive title IV-D services for any reason.

(c) A copy of the order for genetic tests shall be served upon persons required to comply with the order only by personal service or registered mail, return receipt requested. The order shall specify the time and place the person is required to appear for testing, which shall be at least ten days after the date the order is entered.

(d) If a presumption of paternity arises pursuant to subsection (a) of K.S.A. 38-1114 and amendments thereto because the mother married or attempted to marry any man, the secretary shall not order genetic testing unless a court of this state or an appropriate tribunal in another state has found that determining the child's biological father is in the child's best

interests. If a tribunal subsequently determines that the prohibition of this subsection applied at the time genetic tests were ordered by the secretary, any support order based in whole or in part upon the genetic tests may be set aside only as provided in K.S.A. 60-260 and amendments thereto.

(e) Upon receiving the results of genetic testing, the secretary shall promptly send a copy of the results to the parties, together with notice of the time limits for requesting any additional genetic tests or for challenging the results pursuant to K.S.A. 38-1118 and amendments thereto, how to make such request or challenge, and any associated costs. The notice shall state the consequences pursuant to K.S.A. 38-1118 and amendments thereto of failing to act within the time allowed by the statute. Any additional genetic tests shall be at the expense of the person making the request for additional genetic tests. Failure of the person requesting additional tests to make advance payment as required by the secretary shall be deemed withdrawal of the request.

(f) Any person required to comply with an order issued pursuant to this section may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, by complying with procedures established by the secretary within ten days after entry of the order; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the order is served on the person by mail, the time for requesting review shall be extended by three days. An order issued pursuant to this section shall be subject to defenses that would apply if the order had been issued by a court of this state. If the request for review is made within the time allowed, the effect of the order shall be stayed with respect to the person requesting review pending resolution of the review.

(g) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601, *et seq.*, and amendments thereto, after the time for compliance with the order has expired.

Sec. 56. K.S.A. 39-7,146 is hereby amended to read as follows: 39-7,146. (a) If the responsible parent owes any arrearages, the secretary may serve upon the responsible parent an order for minimum payments to defray the arrearages. The order shall identify the amount of unpaid arrearages and the minimum periodic payment the obligor is required to make to defray the arrearages. The amount specified for the minimum periodic payment shall be in addition to any current support order. The order shall state that failure to request review of the stated amount of arrearages may bar any later challenge to the amount. The order shall be served on the responsible parent only by personal service or registered mail, return receipt requested.

(b) The secretary shall adopt guidelines for determining minimum payments to defray arrearages that may be ordered pursuant to this section. To the extent that information is known, the following factors shall be considered: the financial condition of the child, custodial parent and responsible parent; the amount of the current support order; the existence of other dependents; and the total of unpaid arrearages.

(c) Unless stayed, an order issued pursuant to this section shall be effective 30 days after the date of entry. The responsible parent may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, by complying with procedures established by the secretary within ten days after entry of the order; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the order is served by mail, the time shall be extended by three days.

(d) If, after an order issued pursuant to this section becomes effective, the responsible parent fails to make the minimum payments to defray arrearages, the order may be enforced pursuant to the civil enforcement provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601 *et seq.*, and amendments thereto.

Sec. 57. K.S.A. 39-7,150 is hereby amended to read as follows: 39-7,150. (a) Upon determining that arrearages exist in a title IV-D case, the secretary may enforce the support order by an administrative levy upon the responsible parent's cash assets. Any retirement fund that may be revoked or terminated by the responsible parent and is composed of cash

assets shall be subject to administrative levy under this section, notwithstanding any other provision of law unless the retirement fund has any primary beneficiary other than the responsible parent or the responsible parent's spouse.

(b) To initiate an administrative levy under this section, the secretary shall serve an order to restrict transfer upon the holder of any cash asset of the responsible parent. The secretary may include with the order to restrict transfer an order to verify information concerning the cash asset. Except as otherwise provided pursuant to subsection (i), the order to restrict transfer shall be served only by personal service or registered mail, return receipt requested.

(c) The order to restrict transfer shall attach, upon receipt by the holder, the interest of the responsible parent in any cash asset in the possession or control of the holder subject to any prior attachment or lien or any right of setoff that the holder may have against such assets. If the total value of all attachable cash assets is less than \$25 at that time, no interest shall be attached by the order to restrict transfer. Upon attachment, the holder shall not transfer any of the attached assets without the consent of the secretary until further order of the secretary.

(d) Any cash asset held by the responsible parent in joint tenancy with rights of survivorship shall be presumed to be owned entirely by the responsible parent. The burden of proving otherwise shall be upon any person asserting ownership of any attached cash asset. Neither the holder nor the secretary shall be liable to the joint owners if the ownership of the cash assets is later proven not to be the responsible parent's.

(e) The holder shall promptly notify any co-owner of the cash asset or account about the attachment if the co-owner's interest appears to be affected by the attachment.

(f) If an order to restrict transfer is issued, the secretary shall simultaneously send notice to the responsible parent by only personal service or registered mail, return receipt requested. The notice shall state when review is available and how to request review.

(g) If the secretary includes with the order to restrict transfer an order to verify information, the holder shall comply with the terms of the order to verify information within 14 days of receipt.

(h) If the time allowed to request an administrative hearing has elapsed and the proposed levy has not been challenged or the challenge has been resolved, in whole or in part, in favor of the secretary, the secretary shall issue an order to the holder to disburse the attached funds.

(i) If the holder is a financial institution that has entered into an agreement with the secretary, the agreement may provide for alternative methods of: (1) Notifying the financial institution to restrict transfer of cash assets or to disburse proceeds of the order; (2) resolving disputes between the financial institution and the secretary concerning an administrative levy; and (3) exchanging any data related to the IV-D program.

(j) The exemptions contained in article 23 of chapter 60 shall apply to any attachment under this section.

(k) The responsible parent, the holder or any co-owner may contest any order entered under this section that affects the person's rights or duties. The aggrieved person may request: (1) an administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, by complying with procedures established by the secretary within ten days after entry of the order being contested; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the order is served on the person by mail, the person's time for requesting review shall be extended by three days.

(l) Except as otherwise provided in this subsection, the effect of an order to restrict transfer may be stayed pending resolution of any administrative hearing only upon request and only if the person requesting the stay posts a cash or surety bond or provides other unencumbered security equal in value to the amount of the attached assets. Upon notice and opportunity for hearing, the presiding officer may stay or limit the effect of an order to restrict transfer if the request for stay is accompanied by a sworn statement that the responsible parent is not the owner of the attached assets.

The effect of an order to verify information or an order to disburse attached funds shall be stayed only at the discretion of the presiding officer.

(m) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601 *et seq.*, and amendments thereto, after the time for compliance with the order has expired. An order issued pursuant to this section shall not be enforceable more than two years after the date of entry shown on the face of the order.

Sec. 58. K.S.A. 39-7,151 is hereby amended to read as follows: 39-7,151. (a) Nothing in this section shall be construed to prevent the secretary from redirecting support payments by filing a notice of assignment pursuant to K.S.A. 39-754 and amendments thereto, or to require the secretary to issue an order to change payee in lieu of filing such a notice of assignment.

(b) If a support order has been entered in any IV-D case, the secretary may enter an order to change the payee. The order may be directed to the clerk of court or any other payer under the support order and shall require payments to be made and disbursed as provided in the order to change payee until further notice. The order to change payee shall be served on the clerk of the court or other payer by only personal service or registered mail, return receipt requested. The secretary shall serve a copy of the order to change payee on the responsible parent and the custodial parent and, if the previous payee is a real party in interest, upon the previous payee by only personal service or registered mail, return receipt requested. An order to change payee may be entered pursuant to this section only if the payer is subject, or may be made subject, to the jurisdiction of the courts of this state. The jurisdiction of the secretary over the payer for purposes of this section shall commence when the payer is served with the order to change payee and shall continue so long as the order to change payee is in effect and has not been superseded.

(c) If an order to change payee is directed to any payer other than the clerk of court, a copy shall also be filed with the tribunal that issued the support order.

(d) If the underlying support order was entered or has been registered in this state, no order to change payee issued by any IV-D agency shall be effective to require any payer, other than a clerk of court, to send payments to any location other than to the clerk of court where the support order was entered or registered, a location specified in the support order or a location specified by court rule. If the clerk of court receives an order to change payee from anyone other than the secretary and a notice of assignment pursuant to K.S.A. 39-754 and amendments thereto or a conflicting order to change payee is still in effect, the clerk of court may at any time request an administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, by complying with procedures established by the secretary.

(e) If the underlying support order was not entered and has not been registered in this state, any person whose interest may be prejudiced by the order to change payee may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, by complying with procedures established by the secretary within 10 days after entry of the order being contested; or (2) a *de novo* court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the order is served on the person by mail, the person's time for requesting review shall be extended by three days.

(f) An order to change payee issued by a IV-D agency in another state shall have the same force and effect in this state, and be subject to the same limitations, as an order to change payee issued by the secretary under this section. Upon request of a IV-D agency in another state, the secretary may enforce such an order to change payee as though it had been issued by the secretary of social and rehabilitation services. By serving an order to change payee related to a support order entered in this state, such IV-D agency shall be deemed to have consented to the jurisdiction of this state to determine how payments will be directed to maintain accurate payment records and rapid disbursement of support collections.

(g) As used in this section, "clerk of court" includes any district court trustee generally designated to process support payments and includes

any disbursement unit or entity that may be established by court rule to process support payments.

(h) In an administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, the effect of an order to change payee may be stayed only upon request and only if the new payee is a person or entity other than the clerk of the court.

(i) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601 *et seq.*, and amendments thereto, after the time for compliance with the order has expired.

Sec. 59. K.S.A. 2009 Supp. 39-925 is hereby amended to read as follows: 39-925. (a) The administration of the adult care home licensure act is hereby transferred from the secretary of health and environment to the secretary of aging, except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of aging as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state. The secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.

(b) The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of aging shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.

(c) (1) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred adult care home survey, certification and licensing programs, and reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the effective date of this act or thereafter.

(2) No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

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

(4) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, K.S.A. 39-1401 *et seq.*, and amendments thereto, or the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to adult care home certification, survey and licensing or reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

(5) All orders and directives under the adult care home licensure act by the secretary of health and environment in existence immediately prior to the effective date of the transfer of powers, duties and functions by this act, shall continue in force and effect and shall be deemed to be duly issued orders, and directives of the secretary of aging, until reissued, amended or nullified pursuant to law.

(d) (1) All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, except those specified in subsection (d)(2) of this section, shall continue to be effective and shall be deemed to be rules and regulations of the secretary of aging, until revised, amended, revoked or nullified by the secretary of aging, or otherwise, pursuant to law.

(2) The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 *et seq.*, and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.

(e) All contracts shall be made in the name of “secretary of aging” and in that name the secretary of aging may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.

Sec. 60. K.S.A. 39-931 is hereby amended to read as follows: 39-931. Whenever the licensing agency finds a substantial failure to comply with the requirements, standards or rules and regulations established under this act or that a receiver has been appointed under K.S.A. 39-958 and amendments thereto, it shall make an order denying, suspending or revoking the license after notice and a hearing in accordance with the provisions of the Kansas administrative procedure act.

Any applicant or licensee who is aggrieved by the order may appeal such order in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 61. K.S.A. 2009 Supp. 39-944 is hereby amended to read as follows: 39-944. Notwithstanding the existence or pursuit of any other remedy, the secretary of aging, as the licensing agency, in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

Sec. 62. K.S.A. 2009 Supp. 39-947 is hereby amended to read as follows: 39-947. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of aging written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of aging shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of aging sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary of aging. If the secretary of aging denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, the secretary of aging shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 63. K.S.A. 2009 Supp. 39-948 is hereby amended to read as follows: 39-948. (a) A licensee may appeal to the district court from a decision of the secretary of aging under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of aging shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of aging shall

dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 64. K.S.A. 39-964 is hereby amended to read as follows: 39-964. (a) The provisions of the Kansas administrative procedure act and the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ shall govern all administrative proceedings conducted pursuant to K.S.A. 39-945 through 39-963, and amendments thereto, except to the extent that the provisions of the above-named acts would conflict with the procedures set forth in the above-mentioned statutes.

(b) This section shall be a part of and supplemental to article 9 of chapter 39 of the Kansas Statutes Annotated.

Sec. 65. K.S.A. 2009 Supp. 39-1412 is hereby amended to read as follows: 39-1412. (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A.39-1401 through 39-1411, and amendments thereto, are hereby transferred from the secretary of health and environment to the secretary of aging, as provided by this act.

(b) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such program. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(c) No suit, action or other proceeding, judicial or administrative, pertaining to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(d) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-1401 *et seq.*, and amendments thereto, or the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

Sec. 66. K.S.A. 40-205d is hereby amended to read as follows: 40-205d. Any person aggrieved by the commission's decision shall have the right to appeal the decision in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 67. K.S.A. 40-251 is hereby amended to read as follows: 40-251. (a) The attorney general shall represent the commissioner of insurance in any action to enforce a rule and regulation or order of the commissioner.

(b) Any action of the commissioner of insurance pursuant to law shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The action for review shall be against the commissioner of insurance, not in the commissioner's individual name but in the commissioner's representative capacity.

(c) The state of Kansas shall represent the commissioner of insurance in any action brought against the commissioner in the commissioner's individual name where such activity was in connection with the performance of the commissioner's official duties.

Sec. 68. K.S.A. 40-1621 is hereby amended to read as follows: 40-1621. Within 15 days of the date of the commissioner's approval or denial of the conversion plan submitted in accordance with K.S.A. 40-1620, and amendments thereto, the insurance company shall have the right to request a hearing by filing a written request with the commissioner. The commissioner shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act within 30 days after such request is filed. Any action of the commissioner pursuant to this section is

subject to review in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 69. K.S.A. 41-323 is hereby amended to read as follows: 41-323. Any action of the secretary pursuant to K.S.A. 41-321 and amendments thereto is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. At the time of the filing of the petition for review, the petitioner shall give a bond for costs conditioned on the petitioner's prosecuting the appeal without delay and paying all costs assessed against the petitioner. If review of the decision of the district court is sought pursuant to K.S.A. 77-623 and amendments thereto, the director shall not be required to give a bond on such review.

Sec. 70. K.S.A. 42-703 is hereby amended to read as follows: 42-703. Upon receipt of the application of the proposed irrigation district by the chief engineer, the chief engineer shall cause to be published at applicant's expense, once each week for three consecutive weeks, in a newspaper or newspapers of general circulation in the vicinity of the watercourse or source of supply from which water is sought for the land to be included in the proposed irrigation district, a notice of hearing upon such application. The published notice shall be directed to all persons concerned, without specifically naming any person. Such notice shall contain among other matters a general description of boundaries of the district as proposed; the purpose of the district as proposed; the source of the water supply sought for use and the approximate point of diversion proposed; and the date and place of hearing. Incorporated cities shall be excluded from such district. Any person interested, at any time after first publication of such notice and prior to the expiration of 60 days after the first publication of such notice, may file in duplicate with the chief engineer, a verified written protest against the approval of such application, stating therein all reasons relied upon in objection thereto, which objections shall be duly considered by the chief engineer.

A person who signs a petition and application for the organization and incorporation of a proposed irrigation district shall be permitted to withdraw such person's name as a signer only if the chief engineer determines that the signature was obtained by fraud, undue influence or mutual mistake of fact. All applications for withdrawal of a signature from the petition must be filed with the chief engineer, within 30 days after the first publication of the notice of hearing. The chief engineer may hear and determine any such application for withdrawal of a signature in advance of the hearing for approval of the petition for establishment and organization of the proposed irrigation district.

Any action of the chief engineer upon an application of a proposed irrigation district is subject to review in accordance with the provisions of K.S.A. 2000 Supp. 82a-1901 and amendments thereto. Any action upon such review is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 71. K.S.A. 2009 Supp. 44-322a is hereby amended to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the secretary of labor, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322, and amendments thereto, to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or a presiding officer from the office of administrative hearings shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

responsible for their payment. Any initial order under this section shall be reviewed by the secretary in accordance with K.S.A. 77-527 and amendments thereto. The decision of the secretary shall be final and the amount of any unpaid wages and applicable damages determined by the secretary to be valid shall be due and payable unless judicial review is sought within the time allowed by law.

(c) Any agency action under this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 72. K.S.A. 2009 Supp. 44-556 is hereby amended to read as follows: 44-556. (a) Any action of the board pursuant to the workers compensation act, other than the disposition of appeals of preliminary orders or awards under K.S.A. 44-534a and amendments thereto, shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ by appeal directly to the court of appeals. Any party may appeal from a final order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order. When an appeal has been filed pursuant to this section, an appellee may file a cross appeal within 20 days after the date upon which the appellee was served with notice of the appeal. Such review shall be upon questions of law.

(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

(c) If review is sought on any order entered under the workers compensation act prior to October 1, 1993, such review shall be in accordance with the provisions of K.S.A. 44-551 and this section, and any other applicable procedural provisions of the workers compensation act, as all such provisions existed prior to amendment by this act on July 1, 1993.

(d) (1) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded by the board is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection (d)(1), and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(2) If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded for such benefits by the board is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection (d)(2) for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the court of appeals, the credit under this subsection (d)(2) shall be applied first against such lump-sum amount. If there is no such lump-sum amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further com-

pensation is payable after the credit has been satisfied. The credit allowed under this subsection (d)(2) shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision. The provisions of this subsection (d)(2) shall be applicable in all cases under the workers compensation act in which a final award is issued by an administrative law judge on or after July 1, 1990.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review under this section, and pursuant to K.S.A. 44-534a or K.S.A. 44-551, and amendments thereto, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the administrative law judge or board, is held not liable by the final decision on review by either the board or an appellate court for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such review to pay the amount of compensation to the worker that was erroneously ordered paid. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(g) In any case in which any review is sought under this section and in which the compensability is not an issue to be decided on review, medical compensation shall be payable and shall not be stayed pending such review. The worker may proceed under K.S.A. 44-510k and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

Sec. 73. K.S.A. 44-5,120 is hereby amended to read as follows: 44-5,120. (a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

- (1) Persons claiming benefits under the workers compensation act;
- (2) employers subject to the requirements of the workers compensation act;
- (3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;
- (4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and
- (5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223 and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

(1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;

(2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;

(3) lending money to the claimant during the pendency of the workers compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way for the credit extended to the claimant;

(4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:

(A) Making a false or misleading statement;

(B) misrepresenting or concealing a material fact;

(C) fabricating, altering, concealing or destroying a document; or

(D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection (d)(4);

(5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

(6) breaching a provision of an agreement approved by the director;

(7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;

(8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;

(9) taking a fee or withholding expenses in excess of the amounts authorized by the director;

(10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;

(11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;

(12) instructing employers not to file required documents with the director;

(13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;

(14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;

(16) failing to initiate or reinstate compensation when due if a clear

and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(18) refusing to pay compensation as and when the compensation is due;

(19) refusing to pay any order awarding compensation;

(20) refusing to timely file required reports or records under the workers compensation act, except as provided in K.S.A. 44-557 and amendments thereto; and

(21) for a health care provider to submit a charge for health care that was not furnished.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120 and amendments thereto for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, “costs” include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compen-

sation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.

Sec. 74. K.S.A. 2009 Supp. 44-612 is hereby amended to read as follows: 44-612. Any action of the secretary of labor pursuant to K.S.A. 44-601 through 44-628, and amendments thereto, is subject to review and enforcement by the supreme court in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. Any such review shall take precedence over other civil cases before the court, and the hearing and determination of the action shall be expedited as fully as may be possible consistent with a careful and thorough trial and consideration of the matter.

Sec. 75. K.S.A. 2009 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination*. (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall

send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706 and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

(d) *Referees.* The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714, and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by

the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(3) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(5) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(6) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

(7) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall

be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review.* Any action of the board is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of the board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of the board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

Sec. 76. K.S.A. 2009 Supp. 44-710b is hereby amended to read as follows: 44-710b. (a) *By the secretary of labor.* The secretary of labor shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a and amendments thereto. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of labor grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of contributions or benefit liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710, and amendments thereto, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

(b) *Judicial review.* Any action of the secretary upon an employer's timely request for a review and redetermination of its rate of contributions or benefit liability, in accordance with subsection (a), is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Any action for such review

shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under subsection (i) of K.S.A. 44-709, and amendments thereto, and the workmen's compensation act.

(c) *Periodic notification of benefits charged.* The secretary of labor may provide by rules and regulations for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the secretary of labor may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the secretary's findings of facts in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the secretary of labor in proceedings to redetermine the contribution rate of an employer. The review or any other proceedings relating thereto as provided for in this section may be heard by any duly authorized employee of the secretary of labor and such action shall have the same effect as if heard by the secretary.

Sec. 77. K.S.A. 44-829 is hereby amended to read as follows: 44-829.

(a) Any controversy concerning prohibited practices may be submitted to the board. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it by the board of a written notice, together with a copy of the charges. The accused party shall have seven days within which to serve a written answer to such charges, unless the board determines an emergency exists and requires the accused party to serve a written answer to such charges within 24 hours of their receipt. Hearings on prohibited practices shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the board determines an emergency exists, the board shall follow the procedures contained in K.S.A. 77-536 and amendments thereto. A strike or lockout shall be construed to be an emergency. The board may use its rulemaking power, as provided in K.S.A. 44-820 and amendments thereto, to make any other procedural rules it deems necessary to carry on this function.

(b) The board shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the board finds that the party accused has committed or is committing a prohibited practice, the board shall make findings as authorized by this act and shall file them in the proceedings. Any action of the board pursuant to this section is subject to review and enforcement in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The board is hereby authorized to file a petition in the district court to enforce its final orders until such time as they are modified or set aside by the court. The procedures for obtaining injunction, contempt citations, fines and allied remedies to enforce actions of the board shall be as set forth in the code of civil procedure, except that the provisions of K.S.A. 60-904 and amendments thereto shall not control injunction actions arising out of agricultural employer-employee relations under this act. Such injunctive and allied remedies may be obtained and enforced against persons, employee organizations or associations, labor unions, corporations, and officers of or representatives of the same.

(c) In the event there is an alleged violation of either subsection (b)(8) of K.S.A. 44-828 or subsection (c)(6), (7) or (8) of K.S.A. 44-828, and amendments thereto, the aggrieved party is authorized to seek relief in district court in the manner provided for enforcement of actions of the board in subsection (b), including injunctions, contempt citations, fines and allied remedies, while proceedings on such prohibited practices are pending before the board. Any ruling of the district court shall remain in effect until set aside by the court on motion of the parties or of the board or upon review of the board's order as provided by subsection (b).

Sec. 78. K.S.A. 44-928 is hereby amended to read as follows: 44-928.

(a) Any person aggrieved by any act or determination of the secretary or of the chief inspector, performed or made pursuant to the provisions of this act, or rules and regulations adopted hereunder, may request a hearing thereon. Such hearing shall be conducted by the secretary or the

secretary's designee in accordance with the provisions of the Kansas administrative procedure act.

(b) Any action of the secretary pursuant to this act is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 79. K.S.A. 44-1011 is hereby amended to read as follows: 44-1011. (a) The commission, attorney general or county or district attorney, at the request of the commission, may secure enforcement of any final order of the commission in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The evidence presented to the commission, together with its findings and the order issued thereon, shall be certified by the commission to the district court as its return. No order of the commission shall be superseded or stayed during the proceeding on review unless the district court shall so direct.

(b) Any action of the commission pursuant to the Kansas act against discrimination is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ except: (1) As provided by K.S.A. 44-1044 and amendments thereto; (2) the attorney general or county or district attorney, in addition to those persons specified by K.S.A. 77-611 and amendments thereto, shall have standing to bring an action for review; and (3) on review, the court shall hear the action by trial *de novo* with or without a jury in accordance with the provisions of K.S.A. 60-238 and amendments thereto, and the court, in its discretion, may permit any party or the commission to submit additional evidence on any issue. The review shall be heard and determined by the court as expeditiously as possible. After hearing, the court may affirm the adjudication. If the adjudication by the commission is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the commission for further disposition in accordance with the order of the court.

The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of judicial review of the order. The review shall be heard on the record without requirement of printing.

The commission shall be deemed a party to the review of any order by the court.

Sec. 80. K.S.A. 44-1044 is hereby amended to read as follows: 44-1044. Determinations under K.S.A. 44-1005 or 44-1019, and amendments thereto, by the Kansas human rights commission that no probable cause exists for crediting the allegations of a complaint under the Kansas act against discrimination or the Kansas age discrimination in employment act are hereby specifically exempted from the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ (K.S.A. 77-601 through 77-627, and amendments thereto).

Sec. 81. K.S.A. 44-1208 is hereby amended to read as follows: 44-1208. Any action of the secretary or the secretary's representatives in administering K.S.A. 44-1201 through 44-1213, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 82. K.S.A. 46-243 is hereby amended to read as follows: 46-243. (a) Any state officer or employee or candidate for state office who violates any provision of this act, and such violation is a misdemeanor, shall be subject to censure or forfeiture of office. Whenever the commission determines that any officer or employee has violated any provisions of this act and such violation is a misdemeanor or has violated any provision of this act, or any rule and regulation of the commission, the violation of which does not constitute a misdemeanor but the act does merit censure, forfeiture or other disciplinary action, the commission shall report such fact and the circumstances involved to the officer or agency authorized to impose censure, forfeiture or other disciplinary measure upon such officer or employee in accordance with this act.

(b) When this section applies to an impeachable officer, whether such censure or forfeiture is to be imposed shall be determined by impeachment proceedings.

(c) When this section applies to a legislator, the house of which the

legislator is a member shall determine whether such censure, forfeiture or other disciplinary measure is to be imposed.

(d) When this section applies to any state officer or employee of the legislative branch, except a legislator, the legislative coordinating council shall determine whether such censure, forfeiture or other disciplinary measure is to be imposed.

(e) When this section applies to any state officer or employee of the judicial branch, the supreme court shall determine whether such censure, forfeiture or other disciplinary measure is to be imposed.

(f) When this section applies to any state officer or employee of the executive branch and such state officer or employee is not subject to impeachment, the governor shall determine whether censure, removal of such state officer or employee or other disciplinary measure is to be imposed. Upon a determination by the governor of removal under this subsection, no right of appeal under the Kansas civil service act shall exist, but the determination of removal is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. In lieu of direct removal, the governor may direct the attorney general, district attorney or county attorney to bring appropriate ouster proceedings to determine such forfeiture.

Sec. 83. K.S.A. 46-263 is hereby amended to read as follows: 46-263. When a report is submitted under K.S.A. 46-262 and amendments thereto:

(a) If the respondent is a legislator, the house to which such a report is made shall consider the report and impose censure or disqualification as a legislator, or the house may determine that neither censure nor disqualification is justified.

(b) If the respondent is a state officer or employee of the legislative branch, other than a legislator, the legislative coordinating council shall consider the report and impose censure or remove the state officer or employee from state service, or such council may determine that neither censure nor removal from office is justified. Such a determination by the legislative coordinating council shall be final.

(c) If the respondent is a state officer or employee of the judicial branch, the supreme court shall consider the report and impose censure or remove the state officer or employee from state service, or such court may determine that neither censure nor removal from office is justified. Such a determination by the supreme court shall be final.

(d) If the respondent is not a legislator and is not a state officer or employee of the legislative branch and is not subject to impeachment or of the judicial branch, the governor shall consider the report and impose censure or remove the state officer or employee from state service, or the governor may determine that neither censure nor removal from office is justified. Upon a determination by the governor of removal under this subsection, no right of appeal under the Kansas civil service act shall exist, but the determination of removal is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. In lieu of direct removal, the governor may direct the attorney general to bring ouster proceedings against the respondent.

(e) In the event the respondent is subject to impeachment, the commission shall refer the report to the house of representatives, in lieu of other procedures under this section.

Sec. 84. K.S.A. 46-292 is hereby amended to read as follows: 46-292. Any person aggrieved by any order of the commission pursuant to this act may appeal such order in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 85. K.S.A. 2009 Supp. 47-624 is hereby amended to read as follows: 47-624. (a) In addition to any other penalty provided by law, any person who has in such person's possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be so affected, who permits such animal to run at large; or who keeps such animal where other domestic animals, not affected with or previously exposed to such disease, may be exposed to such contagious or infectious disease; or who sells, ships, drives, trades or gives away such diseased and infected animal or animals which have been exposed to such infection or contagion, except by sale, trade or gift to a regularly licensed disposal

plant; or who moves or drives any domestic animal in violation of the rules and regulations, directions or orders establishing and regulating quarantine may incur a civil penalty imposed under subsection (b) in the amount of not less than \$250 nor more than \$1,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation. Any owner of any domestic animal which has been affected with or exposed to any contagious or infectious disease may dispose of the same after such owner obtains from the livestock commissioner a bill of health for such animal.

(b) Any duly authorized agent of the commissioner, upon a finding that any person, or agent or employee thereof, has violated any of the provisions stated above, may impose a civil penalty upon such person as provided in this section.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the commissioner to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the commissioner. Any such person, within 20 days after notification, may make written request to the commissioner for a hearing in accordance with the provisions of the Kansas administrative procedure act. The commissioner shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the commissioner made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 86. K.S.A. 47-1216 is hereby amended to read as follows: 47-1216. Any action of the commissioner is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 87. K.S.A. 47-1507 is hereby amended to read as follows: 47-1507. (a) If any feedlot operator is aggrieved by any action of the commissioner pertaining to the operation and licensed feedlot operations, other than an order of the commissioner resulting from a hearing conducted in accordance with the Kansas administrative procedure act, such aggrieved operator shall have the right to appeal to the board, by serving written notice upon the commissioner within 15 days after notice of such action is deposited in the mail, addressed to such operator, as evidenced by date stamp applied by the United States postal service.

Upon the filing of such a notice of appeal with the commissioner, the commissioner shall cause the matter to be set for hearing for a date certain within 30 days after receipt of such notice of appeal. The commissioner shall call the board into session for the purpose of hearing such appeal in the county where the operation is being conducted. The board shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act and issue an order and decision determining whether the grievance of such operator is justified. If the record shows any abuse of discretion or any misinterpretation of the law or rules and regulations by the commissioner, the board may reverse the decision of the commissioner or modify or affirm the commissioner's decision.

An order of the commissioner resulting from a hearing in accordance with the provisions of the Kansas administrative procedure act is subject to review by the board in accordance with K.S.A. 77-527 and amendments thereto.

(b) Any action of the board pursuant to subsection (a) is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(c) The commissioner and, upon appeal, the board shall have the exclusive power to determine whether or not a feedlot operator has complied with the standards set forth in this act and rules and regulations adopted by the commissioner, subject to review as provided by subsection (b).

Sec. 88. K.S.A. 2009 Supp. 47-1706 is hereby amended to read as follows: 47-1706. (a) The commissioner may refuse to issue or renew or may suspend or revoke any license or permit required under K.S.A. 47-1701 et seq., and amendments thereto, for any one or more of the following reasons:

- (1) Material misstatement in the application for the original license or permit, or in the application for any renewal of a license or permit;
- (2) willful disregard of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, or any willful aiding or abetting of another in the violation of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder;
- (3) permitting any license or permit issued hereunder to be used by an unlicensed or unpermitted person or transferred to unlicensed or unpermitted premises;
- (4) the conviction of any crime relating to the theft of animals or a first conviction of cruelty to animals;
- (5) substantial misrepresentation;
- (6) misrepresentation or false promise, made through advertising, salespersons, agents or otherwise, in connection with the operation of business of the licensee or permittee;
- (7) fraudulent bill of sale;
- (8) the housing facility or the primary enclosure is inadequate; or
- (9) the feeding, watering, sanitizing and housing practices at the licensee's or permittee's premises are not consistent with the Kansas pet animal act or the rules and regulations adopted hereunder.

(b) The commissioner shall refuse to issue or renew and shall suspend or revoke any license or permit required under K.S.A. 47-1701 et seq., and amendments thereto, for the second or subsequent conviction of cruelty to animals, K.S.A. 21-4310, and amendments thereto.

(c) Any refusal to issue or renew a license or permit, and any suspension or revocation of a license or permit, under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(d) Whenever the commissioner denies, suspends or revokes a license or permit under this section, the commissioner or the commissioner's authorized, trained representatives shall seize and impound any animals in the possession, custody or care of the person whose license or permit is denied, suspended or revoked if there are reasonable grounds to believe that the animals' health, safety or welfare is endangered. Except as provided by K.S.A. 21-4311, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person's license or permit is denied, suspended or revoked. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person's license or permit is not denied, suspended or revoked, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 89. K.S.A. 2009 Supp. 47-1707 is hereby amended to read as follows: 47-1707. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the commissioner, upon a finding that a person has violated or failed to comply with any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, may impose on such person a civil fine not exceeding \$1,000 for each violation or requirement to attend an educational course regarding animals and their care and treatment. If the commissioner imposes the educational course, such person may choose either the fine or the educational course. If such person chooses the fine, the commissioner shall establish the amount pursuant to the fine provisions of this section. The educational course shall be administered by the commissioner in consultation with Kansas state university college of veterinary medicine.

(b) Any imposition of a civil fine pursuant to this section shall be only upon notice and a hearing conducted in accordance with the Kansas ad-

ministrative procedure act and shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(c) Whenever the commissioner has reasonable grounds to believe that a person or premises required to be licensed or permitted under the Kansas pet animal act has failed to comply with or has violated any provision of the Kansas pet animal act or any rule and regulation adopted hereunder and that the health, safety or welfare of animals in such person's possession, custody or care is endangered thereby, the commissioner shall seize and impound such animals using emergency adjudicative proceedings in accordance with the Kansas administrative procedure act. Except as provided by K.S.A. 21-4311, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person is found to be in violation of the Kansas pet animal act or any rules and regulations adopted hereunder. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person is not found to be in violation of the Kansas pet animal act or any rules and regulations adopted hereunder, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 90. K.S.A. 47-1708 is hereby amended to read as follows: 47-1708. Any action of the commissioner pursuant to K.S.A. 47-1705 or 47-1706, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 91. K.S.A. 2009 Supp. 47-1809 is hereby amended to read as follows: 47-1809. (a) As used in this section, "feral swine" means any untamed or undomesticated hog, boar or pig; swine whose reversion from the domesticated state to the wild state is apparent; or an otherwise freely roaming swine having no visible tags, markings or characteristics indicating that such swine is from a domestic herd, and reasonable inquiry within the area does not identify an owner.

(b) No person shall import, transport or possess live feral swine in this state.

(c) No person shall intentionally or knowingly release any hog, boar, pig or swine to live in a wild or feral state upon public or private land.

(d) No person shall engage in, sponsor, instigate, assist or profit from the release, killing, wounding or attempted killing or wounding of feral swine for the purpose of sport, pleasure, amusement or production of a trophy.

(e) Violation of subsection (b) or (c) may result in a civil penalty in the amount of not less than \$1,000 nor more than \$5,000 for each such violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(f) Violation of subsection (d) may result in a civil penalty of not less than \$250 nor more than \$2,500 for each such violation.

(g) Any duly authorized agent of the livestock commissioner, upon a finding that any person, or agent or employee thereof, has violated any of the provisions stated above, may impose a civil penalty upon such person as provided in this section.

(h) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the livestock commissioner to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the commissioner. Any such person, within 20 days after notification, may make written request to the commissioner for a hearing in accordance with the provisions of the Kansas administrative procedure act. The commissioner shall affirm, reverse or modify the order and shall specify the reasons therefor.

(i) Any person aggrieved by an order of the commissioner made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(j) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(k) The livestock commissioner, or the authorized representative of the livestock commissioner, may destroy or require the destruction of any feral swine upon discovery of such swine.

(l) The provisions of this section shall not be construed to prevent owners or legal occupants of land, the employees of such owners or legal occupants or persons designated by such owners or legal occupants from killing any feral swine when found on their premises or when destroying property. Such designees shall have a permit issued by the livestock commissioner in their possession at the time of the killing of the feral swine.

(m) The livestock commissioner may adopt rules and regulations to carry out the provisions of this section.

Sec. 92. K.S.A. 2009 Supp. 47-2101 is hereby amended to read as follows: 47-2101. (a) It shall be unlawful for any person to engage in the business of raising domesticated deer unless such person has obtained from the livestock commissioner a domesticated deer permit. Application for such permit shall be made in writing on a form provided by the commissioner. The permit period shall be for the permit year ending on June 30 following the issuance date.

(b) Each application for issuance or renewal of a permit shall be accompanied by a fee of not more than \$100 as established by the commissioner in rules and regulations.

(c) The livestock commissioner shall adopt any rules and regulations necessary to enforce this section.

(d) Any person who fails to obtain a permit as prescribed in section (a) shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$100. Continued operation, after a conviction, shall constitute a separate offense for each day of operation.

(e) The commissioner may refuse to issue or renew or may suspend or revoke any permit for any one of the following reasons:

(1) Material misstatement in the application for the original permit or in the application for any renewal of a permit;

(2) the conviction of any crime, an essential element of which is misstatement, fraud or dishonesty, or relating to the theft of or cruelty to animals;

(3) substantial misrepresentation;

(4) the person who is issued a permit is found to be adding to such person's herd by poaching or illegally obtaining deer;

(5) willful disregard to any rule or regulation adopted under this section.

(f) Any refusal to issue or renew a permit and any suspension or revocation of a permit under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~.

(g) Domesticated deer shall be identified through implantation of microchips, ear tags, ear tattoos, ear notches or any other permanent identification on such deer as to identify such deer as domesticated deer. Any person who receives a permit issued pursuant to subsection (a) shall keep records of the deer herd pursuant to rules and regulations.

(h) The livestock commissioner shall inspect any premises where a domesticated deer herd has been issued a permit upon receipt of a written, signed complaint that such premises is not being operated, managed or maintained in accordance with rules and regulations.

(i) The livestock commissioner, on a quarterly basis, shall transmit to the secretary of wildlife and parks a current list of persons issued a permit pursuant to this section.

(j) All moneys received under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

(k) As used in this section:

(1) “Deer” means any member of the family cervidae.

(2) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for breeding stock; for any carcass, skin or part of such animal; for exhibition; or for companionship.

Sec. 93. K.S.A. 48-1608 is hereby amended to read as follows: 48-1608. (a) In any proceeding under this act for the adoption or amendment of rules and regulations relating to control of sources of radiation or for granting, suspending, revoking or amending any license, the secretary shall afford an opportunity for a hearing on the record upon the written request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to such proceeding.

In any proceeding for licensing ores processed primarily for their source material content and disposal of by-product material or source material mill tailings or for licensing disposal of low-level radioactive waste, the secretary shall provide an opportunity, after public notice, for written comments and a public hearing, and prior to any such proceeding the secretary shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The analysis shall be available to the public before the commencement of any such hearing and shall include an assessment of the radiological and nonradiological impacts to the public health; an assessment of any impact on any waterway and groundwater; consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted and consideration of the long-term impacts, including decommissioning, decontamination and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination and reclamation.

Hearings concerning a license under this act shall be in accordance with the provisions of the Kansas administrative procedure act. Procedure for other hearings authorized in this subsection shall be established by rule and regulation of the secretary.

(b) When the secretary, or any of the secretary’s duly authorized agents, determines that there are reasonable grounds to believe a violation of the provisions of this act or of the rules and regulations of the secretary has occurred, the secretary shall commence a hearing on the alleged violations or issue an order thereon subject to the right of the person to whom the order is directed to make written request for a hearing within 15 days after service of the order. If a hearing is requested, such hearing shall be held within 30 days after the receipt of the request for hearing, at such time and place as is designated by the secretary. The secretary shall make a determination as to whether the act or the rules and regulations of the secretary have been violated. Hearings under this subsection shall be in accordance with the provisions of the Kansas administrative procedure act.

(c) Whenever the secretary or the director of the division of environment of the department finds that an emergency exists requiring immediate action to protect the public health and safety, an emergency order may be issued in accordance with the provisions of K.S.A. 77-536 and amendments thereto. Any person aggrieved by the issuance of any such emergency order shall be entitled to a hearing in the same manner as is provided in subsection (b).

(d) Any action of the secretary upon a hearing pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 94. K.S.A. 48-1613 is hereby amended to read as follows: 48-1613. (a) Any person who violates any of the provisions of this act or rules and regulations issued pursuant to this act, or who violates any order of the secretary issued pursuant to this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$500 or by imprisonment not to exceed six months or by both such fine and imprisonment, and in addition thereto, may be enjoined from continuing such violation. Each day of such violation shall constitute a separate violation.

(b) Any person who violates any licensing or registration provision of

this act, any rule and regulation or order issued thereunder or any term condition or limitation of any license or registration certificate issued thereunder or who commits any violation for which a license or registration certificate may be revoked under rules and regulations issued pursuant to this act may be subject to a penalty, to be imposed by the secretary, not to exceed \$10,000. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The secretary shall have the power to compromise, mitigate or remit such penalties. Whenever the secretary proposes to subject a person to the imposition of a civil penalty under the provisions of this section the secretary shall follow the procedures contained in subsection (b) of K.S.A. 48-1608, and amendments thereto.

Any action by the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(c) On the request of the secretary, the attorney general is authorized to institute a civil action to collect any penalty imposed pursuant to this section. The attorney general shall have the exclusive power to compromise, mitigate or remit such civil penalties as are referred for collection.

(d) All moneys collected from civil penalties shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. Moneys collected from civil penalties shall not be used for normal operating expenses of the department except as appropriations are made from the general fund in the normal budgetary process.

Sec. 95. K.S.A. 49-422a is hereby amended to read as follows: 49-422a. Any action of the secretary is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 96. K.S.A. 49-621 is hereby amended to read as follows: 49-621.

(a) The director, upon finding that the operator has failed to comply with any provision of this act, any provision of a reclamation plan or any condition of a license or site registration with which the operator is required to comply pursuant to this act, may impose upon the operator a civil penalty not exceeding \$1,000 for each day of noncompliance.

(b) All civil penalties assessed pursuant to this section shall be due and payable within 35 days after written notice of the imposition of a civil penalty has been served upon whom the penalty is being imposed, unless a longer period of time is granted by the director or unless the operator appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the director or the director's designee to the operator upon whom the penalty is to be imposed, stating the nature of the violation, the penalty imposed and the right of the operator upon whom the penalty is imposed to appeal to the director for a hearing on the matter. An operator upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the director. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the director shall be final unless review is sought under subsection (d).

(d) Any action of the director pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 97. K.S.A. 55-164 is hereby amended to read as follows: 55-164.

(a) In addition to any other penalty provided by law, the commission, upon finding that an operator or contractor has violated the provisions of this act or any rule and regulation or order of the commission, may impose a penalty not to exceed \$10,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except upon the written order of the commission to the person who committed the violation. The order shall state the violation, the penalty imposed and the

right to appeal to the order issuing agency. Any such person, within 30 days after service of such order, may make written request to the commission for a hearing thereon. The commission shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act within 30 days after receipt of such request.

(c) Any person aggrieved by any order issued pursuant to this section may appeal therefrom in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(d) The commission may order an operator or contractor to pay any costs and reasonable attorney fees incurred by the commission in imposing and collecting any penalty pursuant to this section and may collect interest on any portion of such penalty, costs and attorney fees which remains unpaid more than 30 days after imposition, at the rate provided by K.S.A. 16-204, and amendments thereto, for interest on judgments.

(e) All moneys received from penalties imposed and costs and attorney fees assessed pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the conservation fee fund.

Sec. 98. K.S.A. 55-1,119 is hereby amended to read as follows: 55-1,119. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of K.S.A. 55-1,117, and amendments thereto, or rules and regulations adopted thereunder, may impose a penalty not to exceed \$10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Whenever the secretary or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such underground storage. Any person aggrieved by such order may request in writing, within 15 days after service of the order, a hearing on the order. Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 99. K.S.A. 55-443 is hereby amended to read as follows: 55-443. (a) It is a violation for any person to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the Kansas department of agriculture;

(2) hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under the petroleum products inspection law;

(3) failure to follow the applicable version of NIST Handbook as referenced in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder when installing, repairing, calibrating or testing a device;

(4) failure to complete the testing or placing-in-service report in its

entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(5) filing a false or fraudulent application or report to the secretary;

(6) failure to pay all fees and penalties as prescribed by the petroleum products inspection law and the rules and regulations adopted and promulgated pursuant to the petroleum products inspection law;

(7) refuse to keep and make available for examination by the Kansas department of agriculture all books, papers, and other information necessary for the enforcement of the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(8) failure to have any commercial dispensing device tested as required by the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(9) sell, offer or expose for sale any petroleum product which does not comply with the provisions of the petroleum products inspection law;

(10) sell, use, remove, otherwise dispose of or fail to remove from the premises specified, any dispensing device, package or commodity contrary to the terms of any order issued by the secretary;

(11) represent that diesel fuel is or contains biodiesel fuel blend or otherwise to represent that diesel fuel is made from renewable resources, unless not less than 2% of the diesel fuel mixture is mono-alkyl esters derived from vegetable oil, recycled cooking oil or animal fat. Biodiesel fuel used in biodiesel fuel blends shall conform with specification D6751-02, issued March 2002, by the American society of testing and materials or a later version as adopted by rules and regulations of the secretary. If a retail petroleum marketer is alleged to have violated the provisions of this subsection, it shall be a defense, that the retail petroleum marketer relied in good faith upon the bill of lading; and

(12) violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto.

(b) Any person who violates any provision of the petroleum products inspection law or any applicable provisions of chapter 83 of the Kansas Statutes Annotated, or amendments thereto, or any rules and regulations adopted thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (c) in an amount, fixed by rules and regulations of the secretary, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(c) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(d) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(e) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(f) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(g) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(h) Any civil penalty recovered pursuant to the provisions of this sec-

tion or any penalty recovered under the consumer protection act for violations of this section, and amendments thereto, or any rules and regulations adopted thereunder, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

(i) This section shall be part of and supplemental to the petroleum products inspection act, article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 100. K.S.A. 55-606 is hereby amended to read as follows: 55-606. (a) Any action of the commission pursuant to K.S.A. 55-601 through 55-609, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The action for review shall be brought in the district court having venue and first acquiring jurisdiction of the matter. Notwithstanding the provisions of K.S.A. 77-622 and amendments thereto, the authority of the court shall be limited to a judgment either affirming or setting aside in whole or in part the agency action.

(b) Before any action for judicial review may be brought by a person who was a party to the proceeding resulting in the agency action, a petition for reconsideration shall first be filed with the commission in accordance with the provisions of K.S.A. 77-529, as amended by section 15 of chapter 356 of the laws of 1988.

An action for judicial review may be brought by any person aggrieved by the agency action, whether or not such person was the petitioner for reconsideration. If no petition for reconsideration is filed, any person aggrieved by the agency action who was not a party to the proceeding before the commission may bring an action for judicial review of such agency action.

(c) Any action for review pursuant to this section shall have precedence in any court and on motion shall be advanced over any civil cause of different nature pending in such court. In any such action, a county abstract may be filed by the commission or any other interested party.

Sec. 101. K.S.A. 55-1410 is hereby amended to read as follows: 55-1410. Any action of the commission under the Kansas natural gas pricing act is subject to review by the supreme court in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. Such review shall be taken in the same manner and time as allowed by law for actions for review by the court of appeals of orders of the commission which relate to rate hearings.

Sec. 102. K.S.A. 2009 Supp. 55-1639 is hereby amended to read as follows: 55-1639. (a) The commission, upon a finding that a person has violated any provision of K.S.A. 2009 Supp. 55-1637, and amendments thereto, or rules and regulations adopted thereunder, may impose a penalty not to exceed \$10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the commission to the person who committed the violation. The order shall state the violation and the penalty to be imposed.

(c) Whenever the commission or the commission's duly authorized agents find that the escape of carbon dioxide into the atmosphere from injection of carbon dioxide is not being prevented or that the soil or waters of the state are not being protected from pollution resulting from injection of carbon dioxide, the commission or the commission's duly authorized agents shall issue an order prohibiting such injection. Any person aggrieved by such order may request in writing, within 15 days after service of the order, a hearing on the order. Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the commission pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 103. K.S.A. 58-1307 is hereby amended to read as follows: 58-

1307. (a) Any governmental entity undertaking an addition to or alteration of a qualified historic facility, as defined in section 504(c) of the Americans with disabilities act of 1990 as required by Title II, shall follow 28 CFR Part 35.150(b)(2) and 35.150(d).

(b) Any person undertaking an addition to or alteration of a qualified historic facility, as defined in section 504(c) of the Americans with disabilities act of 1990 as required by Title III, shall follow 28 CFR Part 36.405.

(c) Any consultation for alternative methods of access with the state historic preservation officer required by 28 CFR Part 35.150(b)(2) or 35.150(d) or 28 CFR Part 36.405 shall include descriptions of alternative methods of providing access, one copy of the facility plans, with dimensions, for the applicable areas of the addition or alteration, and photographs of the existing conditions.

(d) In addition to subsection (c), the state historic preservation officer shall solicit additional information from the requestor and perform an on-site inspection of the qualified historic facility.

(e) The state historic preservation officer shall initiate consultation and evaluation of properly submitted requests within 30 days from the date the request was received.

(f) Any action by a state officer or agency pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. Any action pursuant to this section by any other person or entity is subject to review by the district court of the county where the facility is located.

Sec. 104. K.S.A. 58-1405 is hereby amended to read as follows: 58-1405. (a) Upon application therefor, the director may waive any requirement of K.S.A. 58-1402, and amendments thereto. Applications for a waiver shall be submitted to the director. If the director determines that such compliance is financially or environmentally impractical, the director may waive such requirement. The director shall render a decision regarding any application submitted pursuant to this section within 60 days of receipt thereof.

(b) Unless otherwise provided by rules and regulations adopted by the director, proceedings to consider a waiver under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Appeals from the decision of the director shall be governed by the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 105. K.S.A. 58-3058 is hereby amended to read as follows: 58-3058. Any person aggrieved by an order of the commission may appeal the order in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 106. K.S.A. 58-3314 is hereby amended to read as follows: 58-3314. (a) A person who has exhausted all administrative remedies available from the commissioner and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the commissioner is entitled to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(b) This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief or trial *de novo* provided by law. A preliminary, procedural or intermediate action or ruling by the commissioner is immediately reviewable if review of the final decision of the commissioner would not provide an adequate remedy.

Sec. 107. K.S.A. 58-3959 is hereby amended to read as follows: 58-3959. A person aggrieved by a decision of the administrator or whose claims have not been acted upon within 90 days may bring an action to establish a claim in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 108. K.S.A. 58-4120 is hereby amended to read as follows: 58-4120. Any person aggrieved by an order of the board may appeal the order in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 109. K.S.A. 58-4211 is hereby amended to read as follows: 58-4211. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

- (1) Proof of financial unfitness of the applicant;
- (2) material false statement in an application for a license;
- (3) filing a materially false or fraudulent tax return as certified by the director of taxation;
- (4) negligently failing to comply with any applicable provision of the Kansas manufactured housing act or any applicable rule or regulation adopted pursuant thereto;
- (5) knowingly defrauding any retail buyer to the buyer's damage;
- (6) negligently failing to perform any written agreement with any buyer;
- (7) failure or refusal to furnish and keep in force any required bond;
- (8) knowingly making a fraudulent sale or transaction;
- (9) knowingly engaging in false or misleading advertising;
- (10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;
- (11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;
- (12) knowingly violating any law relating to the sale, distribution or financing of manufactured homes or mobile homes, as the case may be;
- (13) being a manufactured home manufacturer or factory representative, officer, agent or any representative thereof, who has:
 - (A) Induced or has attempted to induce, by coercion, intimidation or discrimination, any dealer to involuntarily accept delivery of any manufactured home or mobile home, parts or accessories therefor, or any form of advertisements or other commodities which shall not have been ordered by the dealer;
 - (B) unfairly, without due regard to the equities of the dealer, and without just provocation, canceled, terminated or failed to renew a manufactured home sales agreement with any new manufactured home dealer;
 - (C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any dealer to involuntarily enter into any manufactured home sales agreement with such manufacturer, factory branch or any representative thereof, or to do any other act to a dealer which may be deemed a violation of the Kansas manufactured housing act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a manufactured home sales agreement existing between such parties;
- (14) being a manufacturer who fails to specify in writing for the protection of the buying public the delivery and preparation obligations of its dealers prior to delivery of new manufactured homes or mobile homes to new manufactured home dealers. A copy of such writing shall be filed with the division by every licensed manufacturer of manufactured homes and the contents thereof shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer shall constitute the product or warranty liability of the manufacturer. The manufacturer shall reasonably compensate any authorized dealer for the performance of delivery and preparation obligation;
- (15) being a manufactured home manufacturer or factory branch who fails to supply a new manufactured home dealer with a reasonable quantity of new manufactured homes, parts and accessories, in accordance with the manufactured home sales agreement. It shall not be deemed a violation of the Kansas manufactured housing act, if such failure is attributable to factors reasonably beyond the control of such manufacturer or factory branch;
- (16) knowingly used or permitted the use of dealer license plates contrary to law;
- (17) has failed or refused to permit an agent of the division, during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchases and sales of manufactured homes and mobile homes;

(18) failure to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;

(19) failure or refusal to surrender a dealer's license or dealer's plates to the division or its agent upon demand;

(20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;

(21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or salesperson;

(22) has cross-titled a title to any purchaser of any manufactured home or mobile home. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any manufactured home or mobile home and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned manufacturer's statement of origin or reassigned certificate of title;

(23) has changed the location of such person's established place of business prior to approval of such change by the division;

(24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";

(25) failure to provide adequate proof of ownership for manufactured homes and mobile homes in the dealer's possession.

(b) The director may deny the application for a license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(c) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its salespersons or representatives while acting as its agents.

(d) When any licensee is found to be allegedly violating any of the applicable provisions of the Kansas manufactured housing act, or any order or rule and regulation adopted pursuant thereto, the director, upon the director's own motion or upon complaint, may commence a hearing against the licensee, which hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(e) Any person who is found to have violated any applicable provisions of the Kansas manufactured housing act, any rule and regulation adopted pursuant thereto or any applicable order of the director shall be subject to a civil penalty of not less than \$50 nor more than \$1,000 for each violation or such person's license may be suspended or revoked or both civil penalty and license suspension or revocation.

(f) Any licensee or other person aggrieved by a final order of the director may appeal to the district court as provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(g) The revocation or suspension of a manufacturer's license may be limited to one or more municipalities or counties or any other defined trade area.

Sec. 110. K.S.A. 2009 Supp. 65-163 is hereby amended to read as follows: 65-163. (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in

addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply system permit obtained in a manner similar to that prescribed by this section from the secretary.

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

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

(b) (1) Whenever a complaint is made to the secretary by any city of the state, by a local health officer, or by a county or joint board of health concerning the sanitary quality of any water supplied to the public within the county in which the city, local health officer or county or joint board of health is located, the secretary shall investigate the public water supply system about which the complaint is made. Whenever the secretary has reason to believe that a public water supply system within the state is being operated in violation of an applicable state law or an applicable rule and regulation of the secretary, the secretary may investigate the public water supply system.

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

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

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

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

(4) Whenever complaint is made to the secretary by the mayor of any city of the state, by a local health officer or by a county or joint board of health, or whenever an investigation is undertaken at the initiative of the secretary, relating to any alleged violation of the provisions of the permit for placement or storage of municipal water treatment residues in such basins, the public water supply system operator shall furnish all information the secretary requires. If the secretary finds that there is any violation of the terms of the permit, that the means of placement and storage exceed the terms of the permit or that any other condition exists

by reason of the means of placement and storage that may be detrimental to the health of any inhabitants of the state or to the environment, the secretary shall have the authority to issue an order amending the permit or otherwise requiring the operator to perform remedial measures to curtail or prevent such detrimental conditions.

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

(e) The secretary shall establish by rule and regulation a system of fees for the inspection and regulation of public water supplies. No such fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public water supply system. All such fees shall be paid quarterly in the manner provided for fees imposed on retail sales by public water supply systems pursuant to K.S.A. 82a-954, and amendments thereto. The secretary shall remit all moneys collected for such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the public water supply fee fund created by K.S.A. 65-163c, and amendments thereto.

(f) There is hereby created an advisory committee to make recommendations regarding: (1) Fees to be adopted by the secretary under subsection (e); (2) means of strengthening on-site technical assistance to public water supply systems; (3) standards for on-site and classroom water treatment operator certification programs; (4) other matters concerning public water supplies; and (5) to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c, and amendments thereto. Such advisory committee shall consist of one member appointed by the secretary to represent the department of health and environment, one member appointed by the director of the Kansas water office to represent such office and two members appointed by the secretary as follows: One from three nominations submitted by the Kansas section of the American waterworks association, and one from three nominations submitted by the Kansas rural water association. Members of the advisory committee shall serve without compensation or reimbursement of expenses. The advisory committee shall meet at least four times each year on call of the secretary or a majority of the members of the committee.

Sec. 111. K.S.A. 2009 Supp. 65-163a is hereby amended to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead to the contamination of the public water supply system and may continue to refuse the delivery of water to the premises until the condition is remedied.

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

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

Sec. 112. K.S.A. 65-170d is hereby amended to read as follows: 65-170d. (a) Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165 and amendments thereto; (2) any effluent standard or limitation or any water quality standard or other rule or regulation promulgated pursuant to K.S.A. 65-171d and amendments thereto; (3) any filing requirement made pursuant to

K.S.A. 65-164 or 65-166, and amendments thereto; (4) any reporting, inspection or monitoring requirement made pursuant to this act or K.S.A. 65-166 and amendments thereto; or (5) any lawful order or requirement of the secretary of health and environment shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation. In the case of a continuing violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a), may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No such penalty shall be imposed except upon the written order of the director of the division of environment to such person stating the violation, the penalty to be imposed and the right of such person to appeal to the secretary of health and environment. Any such person may, within 15 days after service of the order make written request to the secretary of health and environment for a hearing thereon. The secretary of health and environment shall hear such person or persons in accordance with the provisions of the Kansas administrative procedure act within 30 days after receipt of such request.

(d) Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 113. K.S.A. 2009 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the soil and waters of the state from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their designated uses. In no event shall the secretary's authority be interpreted to include authority over the beneficial use of water, water quantity allocations, protection against water use impairment of a beneficial use, or any other function or authority under the jurisdiction of the Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and amendments thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(2) "Confined feeding facility" means any lot, pen, pool or pond: (A) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (B) which is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than

700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. “Animal unit” also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility. However, each head of swine weighing 55 pounds or less shall be counted as 0.0 animal unit for the purpose of determining the need for a federal permit. Except as otherwise provided, animal units for public livestock markets shall be determined by using the average annual animal units sold by the market during the past five calendar years divided by 365. Such animal unit determination may be adjusted by the department if the public livestock market submits documentation that demonstrates that such adjustment is appropriate based on the amount of time in 24-hour increments or partials thereof that animals are at the market.

(4) “Animal unit capacity” means the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time.

(5) “Habitable structure” means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) “Wildlife refuge” means Cheyenne Bottoms wildlife management area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir or pond to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary’s duly authorized agents find that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond not regulated by the state corporation commission is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary’s duly authorized agents shall issue an order prohibiting such storage or disposal of salt water or refuse. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place.

(g) Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 to 999, such facility shall register with the secretary of health and environment. Facilities with a capacity of less than 300 animal units may register with the secretary. Any such registration shall be accompanied by a \$25 fee. Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (h). If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by a facility with an animal unit capacity of less than 300, the secretary may certify that no permit is required. If there is no water pollution potential nor any violation of separation distances posed by a facility with an animal unit capacity of 300 to 999, the secretary shall certify that no permit is required and that there are no certification conditions pertaining to separation distances. If a separation distance violation is identified, the secretary may reduce the separation distance in accordance with subsection (i) and shall certify any such reduction of separation distances.

(h) (1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the application for a permit is submitted:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 or more.

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the application for a permit is submitted:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;

(C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection (k) for the existing facility; and

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (k) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

(i) (1) The separation distance requirements of subsections (h)(1) and (2) shall not apply if the applicant for a permit obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2) (A) The secretary may reduce the separation distance requirements of subsection (h)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

(B) The secretary may reduce the separation distance requirements

of subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection (h)(2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(j) (1) The separation distances required pursuant to subsection (h)(1) shall not apply to:

(A) Confined feeding facilities which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections (h)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections (h)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections (a), (e) and (f) of K.S.A. 65-1,178 and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

(k) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or wastewater storage structures and any additional areas designated by the applicant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

(l) The applicant shall give the notice required by subsections (i)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The applicant shall

submit to the department evidence, satisfactory to the department, that such notice has been given.

(m) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.

Sec. 114. K.S.A. 65-171s is hereby amended to read as follows: 65-171s. (a) Any person who violates any provision of K.S.A. 65-171r and amendments thereto shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 for each violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation. The secretary, upon a finding that a person has violated any provision of K.S.A. 65-171r and amendments thereto, may impose upon the person a civil penalty of not to exceed the limitations provided in this section. In determining the amount of the civil penalty, the secretary shall take into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and any corrective actions taken.

(b) All civil penalties assessed shall be due and payable within 35 days after written notice of the imposition of a civil penalty is served on the person upon whom the penalty is being imposed, unless a longer period of time is granted by the secretary or unless the person appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the secretary to the person upon whom the penalty is to be imposed, stating the nature of the violation, the penalty imposed and the right of the person upon whom the penalty is imposed to appeal to the secretary for a hearing on the matter. A person upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the secretary. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the secretary shall be final unless review is sought under subsection (d).

(d) Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 115. K.S.A. 65-1,207 is hereby amended to read as follows: 65-1,207. (a) The secretary may refuse to issue a license or may suspend or revoke any license issued under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee has:

(1) Fraudulently or deceptively obtained or attempted to obtain a license;

(2) failed at any time to meet the qualifications for a license or to comply with any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act;

(3) failed at any time to meet any applicable federal or state standard for lead-based paint activities; or

(4) employed or permitted an uncertified individual to work on a lead-based paint activity.

(b) The secretary may refuse to issue a certificate or may suspend or revoke any certificate issued under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for certificate or certificate holder has:

(1) Fraudulently or deceptively obtained or attempted to obtain a certificate; or

(2) failed at any time to meet qualifications for a certificate or to comply with any provision or requirement of the residential childhood lead poisoning prevention act or any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act.

(c) The secretary may deny, suspend or revoke any accreditation of

a training program under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for training program accreditation or training provider has:

- (1) Fraudulently or deceptively obtained or attempted to obtain accreditation of a training program;
 - (2) failed at any time to meet the qualifications to obtain accreditation of a training program or to comply with any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act;
 - (3) failed to maintain or provide information on training programs;
- or
- (4) falsified information, accreditation or approval records, instructor qualification information or other accreditation or approval information required to be submitted by the secretary.

(d) Any individual, business entity or accredited training program aggrieved by a decision or order of the secretary may appeal the order or decision in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) (1) If the secretary finds that the public health or safety is endangered by the continuation of an abatement project, the secretary may temporarily suspend, without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act, the license of the business entity or public agency or the certificate of any person engaging in such abatement project.

(2) In no case shall a temporary suspension of a license or certificate under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the license or certificate shall be reinstated unless the secretary has suspended or revoked the license or certificate, after notice and hearing in accordance with the provisions of the residential childhood lead poisoning prevention act, or the license has expired as otherwise provided under the residential childhood lead poisoning prevention act.

Sec. 116. K.S.A. 65-1,210 is hereby amended to read as follows: 65-1,210. (a) Any individual, business entity, accredited training program or public agency who violates any provision of the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act, in addition to any other penalty or litigation provided by law, may incur a civil penalty imposed under subsection (b) in a maximum amount not to exceed \$1,000 for the first violation, \$5,000 for each subsequent violation and, in the case of a continuing violation, every day such previously notified violation continues shall be deemed a separate violation.

(b) The secretary, upon finding that any individual, business entity, accredited training program or public agency has violated any provision of the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act, may impose a civil penalty within the limits provided in this section upon such individual, business entity, accredited training program or public agency which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

(c) The secretary, upon finding that an individual, business entity, accredited training program or public agency has violated any provision of the residential childhood lead poisoning prevention act or rules and regulations adopted under the residential childhood lead poisoning prevention act, may issue an order finding such individual, business entity, accredited training program or public agency in violation of the residential childhood lead poisoning prevention act and directing the individual, business entity, accredited training program or public agency to take such action as necessary to correct the violation.

(d) No civil penalty shall be imposed under this section except upon the written order of the secretary after notification and hearing, if a hearing is requested, in accordance with the provisions of the Kansas administrative procedure act.

(e) Any individual, business entity, accredited training program or public agency aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(f) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer and deposited in the lead-based paint hazard fee fund.

(g) The secretary shall use penalties recovered pursuant to the provisions of this section to establish a grant program for communities to conduct activities designed to reduce or eliminate exposure of children to residential lead-based paint hazards.

Sec. 117. K.S.A. 65-1,211 is hereby amended to read as follows: 65-1,211. Notwithstanding any other remedy and in addition to any other remedy, the secretary may maintain, in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, an action in the name of the state of Kansas for injunction or other process against any business entity or individual to restrain or prevent any violation of the provisions of the residential childhood lead poisoning prevention act or of any rules and regulations adopted under the residential childhood lead poisoning prevention act.

Sec. 118. K.S.A. 2009 Supp. 65-1,234 is hereby amended to read as follows: 65-1,234. Any person adversely affected by any order or decision of the secretary pursuant to this act, within 15 days after service of the order or decision, may request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 119. K.S.A. 65-438 is hereby amended to read as follows: 65-438. Any applicant or licensee aggrieved by the decision of the licensing agency may appeal the decision in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 120. K.S.A. 65-440 is hereby amended to read as follows: 65-440. Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the attorney general who shall represent the licensing agency in the proceedings maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a medical care facility without a license under this law. Such proceedings shall be governed by the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 121. K.S.A. 65-504 is hereby amended to read as follows: 65-504. (a) The secretary of health and environment shall have the power to grant a license to a person to maintain a maternity center or child care facility for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept on those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place on the premises where the business is conducted. The secretary of health and environment shall grant no license in any case until careful inspection of the maternity center or child care facility shall have been made according to the terms of this act and until such maternity center or child care facility has complied with all the requirements of this act. Except as provided by this subsection, no license shall be granted without the approval of the secretary of social and rehabilitation services. The secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license. The secretary of health and environment may extend, without the approval of the secretary of social and rehabili-

tation services, the temporary permit to operate for an additional period not to exceed 90 days if an applicant is not in full compliance with the requirements of this act but has made efforts towards full compliance.

(b) (1) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the maternity center or child care facility shall be made under the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the right of entry and access to the premises of the center or facility and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such center or facility shall be filed with the secretary of health and environment.

(2) In cases where neither approval or disapproval can be given within a period of 30 days following formal request for such a study, the secretary of health and environment may issue a temporary license without fee pending final approval or disapproval of the center or facility.

(c) Whenever the secretary of health and environment refuses to grant a license to an applicant, the secretary shall issue an order to that effect stating the reasons for such denial and within five days after the issuance of such order shall notify the applicant of the refusal. Upon application not more than 15 days after the date of its issuance a hearing on the order shall be held in accordance with the provisions of the Kansas administrative procedure act.

(d) When the secretary of health and environment finds upon investigation or is advised by the secretary of social and rehabilitation services that any of the provisions of this act or the provisions of K.S.A. 59-2123 and amendments thereto are being violated, or that the maternity center or child care facility is maintained without due regard to the health, comfort or welfare of the residents, the secretary of health and environment, after giving notice and conducting a hearing in accordance with the provisions of the Kansas administrative procedure act, shall issue an order revoking such license. The order shall clearly state the reason for the revocation.

(e) If the secretary revokes or refuses to renew a license, the licensee who had a license revoked or not renewed shall not be eligible to apply for a license or for a certificate of registration to maintain a family day care home under K.S.A. 65-518 and amendments thereto for a period of one year subsequent to the date such revocation or refusal to renew becomes final.

(f) Any applicant or licensee aggrieved by a final order of the secretary of health and environment denying or revoking a license under this act may appeal the order in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 122. K.S.A. 2009 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, and

amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. 2009 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2009 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2009 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2009 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility or a family day care home if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

(c) Any person who resides in a child care facility or family day care home and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2009 Supp. 38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility or a family day care home. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and amendments thereto.

(e) In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility or family day care home. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility or family day care home. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility or family day care home.

(f) The secretary shall notify the child care applicant, licensee or registrant, within seven days by certified mail with return receipt requested, when the result of the national criminal history record check or other

appropriate review reveals unfitness specified in subsection (a)(1) through (7) with regard to the person who is the subject of the review.

(g) No child care facility or family day care home or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility or family day care home unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(i) In regard to Kansas issued criminal history records:

(1) The secretary of health and environment shall provide in writing information available to the secretary to each child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

(2) The child placement agency is considered to be a governmental entity and the designee of the secretary of health and environment for the purposes of obtaining, using and disseminating information obtained under this section.

(3) The information shall be provided to the child placement agency regardless of whether the information discloses that the subject of the request has been convicted of any offense.

(4) Whenever the information available to the secretary reveals that the subject of the request has no criminal history on record, the secretary shall provide notice thereof in writing to each child placement agency requesting information under this section.

(5) Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information, (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers, (C) the department of health and environment, (D) the department of social and rehabilitation services, (E) the juvenile justice authority, and (F) the courts.

(6) A violation of the provisions of subsection (i)(5) shall be an unclassified misdemeanor punishable by a fine of \$100 for each violation.

Sec. 123. K.S.A. 2009 Supp. 65-6a24 is hereby amended to read as follows: 65-6a24. (a) When any meat, meat food product, poultry or poultry product prepared for intrastate commerce which has been inspected and marked "Kansas inspected and passed" shall be placed or packed in any can, pot, tin, canvas or other receptacle or covering in any establishment where inspection under the provisions of this act is maintained, the person preparing the product shall cause a label to be attached to a can, pot, tin, canvas or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Kansas inspected and passed" under the provisions of this act, and no inspection or examination of meat, meat food products, poultry or poultry products deposited or inclosed in cans, tins, pots, canvas or other receptacle or covering in any establishment where inspection under the provisions of this act is maintained shall be deemed to be complete until such meat, meat food products, poultry or poultry products have been sealed or inclosed in the can, tin, pot, canvas or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products, poultry and poultry products, inspected at any establishment under the authority of this act and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the secretary may require, the infor-

mation required under subsection (m) of K.S.A. 65-6a18 and amendments thereto.

(c) The secretary, whenever the secretary determines such action is necessary for the protection of the public, may prescribe: (1) The style and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any meat or meat products, poultry or poultry products; or (2) definitions and standards of identity or composition for articles subject to this act and standards of fill of container for such articles shall be adopted by the secretary of agriculture in the manner provided by law.

(d) No article subject to this act shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the secretary, are permitted.

(e) If the secretary has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this act is false or misleading in any particular, the secretary may order that such use be withheld unless the marking, labeling or container is modified in such manner as the secretary prescribes so that it will not be false or misleading. If the person using or proposing to use the marking, labeling or container does not accept the determination of the secretary, such person may request a hearing, but the use of the marking, labeling or container shall, if the secretary so directs, be withheld pending hearing and final determination by the secretary. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(f) Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 124. K.S.A. 65-6a34a is hereby amended to read as follows: 65-6a34a. (a) The secretary may deny, suspend, revoke or modify the provisions of any registration issued under the Kansas meat and poultry inspection act, if the secretary finds, after notice and hearing, that the applicant or registrant has:

(1) Been convicted of or pleaded guilty to a violation of the Kansas meat and poultry inspection act or any rule and regulation promulgated thereunder;

(2) failed to comply with any provision or requirement of the Kansas meat and poultry inspection act or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized inspector or any other authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions of the Kansas meat and poultry inspection act; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of the Kansas meat and poultry inspection act.

(b) Before any registration shall be suspended, modified, revoked or denied renewal, the secretary shall inform the registrant of the date and place of hearing upon such proposed revocation, denial or suspension. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) The registration holder may appeal from the decision and order, in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(d) This section shall be part of and supplemental to the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 125. K.S.A. 2009 Supp. 65-6a56 is hereby amended to read as follows: 65-6a56. (a) Any person who violates any of the provisions of the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in

the amount fixed by rules and regulations of the secretary of agriculture in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon finding that any person or agent or employee thereof has violated any provision of the Kansas meat and poultry inspection act or any rule and regulation promulgated thereunder, may impose a civil penalty as provided by this section upon such person.

(c) No civil penalty shall be imposed pursuant to this section except on written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be part of and supplemental to the Kansas meat and poultry inspection act, article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 126. K.S.A. 65-785 is hereby amended to read as follows: 65-785. (a) The secretary may issue and enforce a written or printed stop sale or stop use order to the owner or custodian of any quantity of milk, milk products or dairy products or any equipment used in the storage, handling, production or packaging of milk, milk products or dairy products which the secretary determines to be in violation of any provisions of this act or any rules or regulations adopted hereunder. The order shall prohibit the further sale, processing, movement, and use of such equipment or product, except on approval of the enforcing officer, until such enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the order issued.

(b) No person may sell, use or remove any milk, milk products or dairy products or otherwise violate the terms of any order issued pursuant to subsection (a).

(c) Any order issued pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(d) The provisions of this subsection shall not be construed as limiting the right of the enforcing officer to proceed as authorized by other sections of this act.

Sec. 127. K.S.A. 65-788 is hereby amended to read as follows: 65-788. (a) Any licensee or any employee or agent thereof who violates any provision of this act or any rules and regulations promulgated thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$300 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary to the licensee who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the licensee to appeal to the secretary. Any such licensee within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any licensee aggrieved by a final order of the secretary made

under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

Sec. 128. K.S.A. 65-1121a is hereby amended to read as follows: 65-1121a. (a) Any agency action of the board of nursing pursuant to the Kansas nurse practice act is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(b) This section shall be part of and supplemental to the Kansas nurse practice act.

Sec. 129. K.S.A. 65-1431a is hereby amended to read as follows: 65-1431a. (a) A person whose license has been revoked may apply for reinstatement of the license after the expiration of three years from the effective date of the revocation. Application for reinstatement shall be on a form provided by the board and shall be accompanied by a reinstatement of a revoked license fee established by the board under K.S.A. 65-1447 and amendments thereto. The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement of the license. The applicant shall comply with all conditions imposed by the board in establishing justification for rehabilitation. The board may establish conditions or restrictions on the reinstatement of the applicant's license as it deems appropriate. If the board determines a license should not be reinstated, the person shall not be eligible to reapply for reinstatement for three years from the effective date of the denial. All proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The board, on its own motion, may stay the effectiveness of an order of revocation of license.

(b) This section shall be part of and supplemental to the dental practices act.

Sec. 130. K.S.A. 65-1451 is hereby amended to read as follows: 65-1451. When it appears to the board that any person is violating any of the provisions of this act, the board may in its own name bring an action in a court of competent jurisdiction for an injunction. Any such action shall be taken in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 131. K.S.A. 65-1458 is hereby amended to read as follows: 65-1458. The board shall revoke or suspend the license of any licensed dental hygienist who is found guilty of using or attempting to use in any manner whatsoever any prophylactic lists, call lists, records, reprints or copies of same, or information gathered therefrom, of the names or patients whom the hygienist might have served in the office of a prior employer, unless such names appear upon the bona fide call or prophylactic list of the hygienist's present employer and were caused to so appear through the legitimate practice of dentistry as provided for in this act. The board shall also suspend or revoke the license of any licensed dentist who is found guilty of aiding or abetting or encouraging a dental hygienist employed by such dentist to make use of a so-called prophylactic call list, or the calling by telephone or by use of written letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist formerly employing such hygienist. No order of suspension or revocation provided in this section shall be made or entered except after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act. Any final order of suspension or revocation of a license shall be reviewable in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 132. K.S.A. 2009 Supp. 65-1469 is hereby amended to read as follows: 65-1469. As used in this section:

(a) "Mobile dental facility or portable dental operation" means either of the following:

(1) Any self-contained facility in which dentistry will be practiced, which may be moved, towed or transported from one location to another.

(2) Any nonfacility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location, including, but not limited to: (A) Other dentists' offices; (B) patients' homes; (C) schools; (D) nursing homes; or (E) other institutions.

(b) (1) No person shall operate a mobile dental facility or portable dental operation in this state unless registered in accordance with this section.

(2) In order to operate a mobile dental facility or portable dental operation, the operator shall be a person or entity that is authorized to own a dental practice under Kansas law and possess a current registration issued by the board.

(3) To become registered, the operator shall:

(A) Complete an application in the form and manner required by the board; and

(B) pay a registration fee in the amount established by the board pursuant to K.S.A. 65-1447 and amendments thereto.

(c) (1) The registration under this section shall be renewed on March 1 of even-numbered years in the form and manner provided by the board by rules and regulations.

(2) The registrant shall pay a registration renewal fee in the amount fixed by the board under K.S.A. 65-1447 and amendments thereto.

(d) The board shall adopt rules and regulations as necessary to carry out the provisions of this act. The rules and regulations shall include, but not be limited to, requirements relating to the official address and telephone number of the mobile dental facility or portable dental operation, the proper maintenance of dental records, procedures for emergency follow-up care for patients, appropriate communications facilities, appropriate authorizations for treatment by dental patients, follow-up treatment and services, personnel and address changes, notice to be provided on cessation of operation and such other matters as the board deems necessary to protect the public health and welfare.

(e) The board may refuse to issue a registration under this section or may revoke or suspend a registration upon a finding by the board that an applicant or person registered under this section has failed to comply with any provision of the section or any rules and regulations adopted pursuant to this section. No order refusing to issue a registration or order of suspension or revocation shall be made or entered except after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act. Any final order of suspension or revocation of a license shall be reviewable in accordance with the *Kansas judicial review act* for judicial review and civil enforcement of agency actions.

(f) (1) This section applies to each operator of a mobile dental facility or portable dental operation that provides dental services except those specifically exempted by subsection (2).

(2) This section shall not apply to:

(A) Dentists providing dental services for federal, state and local governmental agencies;

(B) dentists licensed to practice in Kansas providing emergency treatment for their patients of record;

(C) dentists who are not employed by or independently contracting with a mobile dental facility or portable dental operation who provide nonemergency treatment for their patients of record outside the dentist's physically stationary office fewer than 30 days per calendar year;

(D) dental hygienists who are providing dental hygiene services as authorized by the Kansas dental act and the board's rules and regulations;

(E) a dentist who is providing dental services as a charitable health care provider under K.S.A. 75-6102, and amendments thereto;

(F) a dental hygienist who is providing dental hygiene services as a charitable health care provider under K.S.A. 75-6102, and amendments thereto; and

(G) a not-for-profit organization providing dental services.

(g) This section shall be part of and supplemental to the dental practices act.

Sec. 133. K.S.A. 65-1518 is hereby amended to read as follows: 65-

1518. (a) All administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated and affecting any licensee licensed under that article shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Judicial review and civil enforcement of any agency action under article 15 of chapter 65 of the Kansas Statutes Annotated shall be in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(c) If any order of the board in any administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated is adverse to the licensee the costs shall be charged to the licensee as in ordinary civil actions in the district court. Witness fees and costs may be taxed in accordance with the statutes governing taxation of witness fees and costs in the district court.

Sec. 134. K.S.A. 65-1628 is hereby amended to read as follows: 65-1628. (a) If any application for any license, registration or permit is refused or the renewal thereof denied or if any license, registration or permit is suspended, revoked or placed on probation, the board shall notify the person affected in writing of its decision and order and the reasons therefor.

(b) Any action of the board pursuant to K.S.A. 65-1627f and amendments thereto is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 135. K.S.A. 65-1828 is hereby amended to read as follows: 65-1828. (a) A violation of any provision of this act, except as otherwise expressly provided by this act, is a misdemeanor punishable by a fine of not less than \$25 or by imprisonment not exceeding six months, or both, and each day during which such violation continues shall be deemed a separate violation.

(b) The board may institute such actions in the courts of competent jurisdiction as may appear necessary to enforce compliance with any provision of this act.

(c) The board may obtain enforcement of its rules and regulations or any subpoena or other order of the board in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ and may obtain enforcement of any sanitation standards adopted by the secretary of health and environment pursuant to K.S.A. 65-1,148 as if such standards were rules and regulations of the board.

Sec. 136. K.S.A. 2009 Supp. 65-2005 is hereby amended to read as follows: 65-2005. (a) A licensee shall be designated a licensed podiatrist and shall not use any title or abbreviations without the designation licensed podiatrist, practice limited to the foot, and shall not mislead the public as to such licensee's limited professional qualifications to treat human ailments. Whenever a registered podiatrist, or words of like effect, is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to refer to or designate a licensed podiatrist.

(b) The license of each licensed podiatrist shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each case in which a license is renewed for a period of time of less than one year, the board may prorate the amount of the fee established under K.S.A. 65-2012 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee established under K.S.A. 65-2012 and amendments thereto which shall be paid not later than the expiration date of the license. At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If a licensee fails to pay the renewal fee by the date of expiration, the licensee shall be given a second notice that the licensee's license has expired and the license may be renewed only if the renewal fee and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, such licensee's license shall be canceled by operation of law and without further proceedings for failure to renew and shall be reissued only after the licensee has been reinstated under subsection (c).

(c) Any licensee who allows the licensee's license to be canceled by failing to renew may be reinstated upon recommendation of the board and upon payment of the renewal fee and the reinstatement fee established pursuant to K.S.A. 65-2012 and amendments thereto and upon submitting evidence of satisfactory completion of the applicable reeducation and continuing education requirements established by the board. The board shall adopt rules and regulations establishing appropriate reeducation and continuing education requirements for reinstatement of persons whose licenses have been canceled for failure to renew.

(d) The board, prior to renewal of a license, shall require the licensee, if in the active practice of podiatry within Kansas, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.

(e) The board may issue a temporary permit to practice podiatry in this state to any person making application for a license to practice podiatry who meets the required qualifications for a license and who pays to the board the temporary permit fee established pursuant to K.S.A. 65-2012 and amendments thereto. A temporary permit shall authorize the permittee to practice within the limits of the permit until the license is issued or denied to the permittee by the board.

(f) The board may issue a postgraduate permit to practice podiatry to any person engaged in a full-time, approved postgraduate study program; has made application for such postgraduate permit upon a form provided by the board; meets all the qualifications for a license, except the examination required under K.S.A. 65-2004, and amendments thereto; and has paid the fee established pursuant to K.S.A. 65-2012, and amendments thereto. The postgraduate permit shall authorize the person receiving the permit to practice podiatry in the postgraduate study program, but shall not authorize practice outside of the postgraduate study program. The postgraduate permit shall be canceled if the permittee ceases to be engaged in the postgraduate study program.

(g) The board may issue, upon payment to the board of the temporary license fee established pursuant to K.S.A. 65-2012 and amendments thereto, a temporary license to a practitioner of another state or country who is appearing as a clinician at meetings, seminars or training programs approved by the board, if the practitioner holds a current license, registration or certificate as a podiatrist from another state or country and the sole purpose of such appearance is for promoting professional education.

(h) There is hereby created a designation of exempt license. The board is authorized to issue an exempt license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an exempt license established under K.S.A. 65-2012 and amendments thereto. The board may issue an exempt license only to a person who has previously been issued a license to practice podiatry within Kansas, who is no longer regularly engaged in such practice and who does not hold oneself out to the public as being professionally engaged in such practice. An exempt license shall entitle the holder to all privileges attendant to the practice of podiatry. Each exempt license may be renewed annually subject to the other provisions of this section and other sections of the podiatry act. Each exempt licensee shall be subject to all provisions of the podiatry act, except as otherwise provided. The holder of an exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing education required under the podiatry act. Each exempt licensee may apply for a license to regularly engage in the practice of podiatry upon filing a written application with the board and submitting evidence of satisfactory completion of the applicable and continuing education requirements established by the board. The request shall be on a form provided by the board and shall be accompanied by the license fee established under K.S.A. 65-2012 and amendments thereto. The board shall adopt rules and regulations establishing appropriate and continuing education requirements for exempt licensees to become licensed to regularly practice podiatry within Kansas.

(i) There is hereby created a designation of inactive license. The board is authorized to issue an inactive license to any licensee who makes written application for such license on a form provided by the board and

remits the fee for an inactive license established pursuant to K.S.A. 65-2012, and amendments thereto. The board may issue an inactive license only to a person who meets all the requirements for a license to practice podiatry in Kansas, who is not regularly engaged in the practice of podiatry in Kansas, who does not hold oneself out to the public as being professionally engaged in such practice and who meets the definition of inactive health care provider as defined in K.S.A. 40-3401, and amendments thereto. An inactive license shall not entitle the holder to practice podiatry in this state. Each inactive license may be renewed subject to the provisions of this section. Each inactive licensee shall be subject to all provisions of the podiatry act, except as otherwise provided in this subsection. The holder of an inactive license shall not be required to submit evidence of satisfactory completion of a program of continuing education required by K.S.A. 65-2010, and amendments thereto. Each inactive licensee may apply for a license to regularly engage in the practice of podiatry upon filing a written application with the board. The request shall be on a form provided by the board and shall be accompanied by the license fee established pursuant to K.S.A. 65-2012, and amendments thereto. For those licensees whose license has been inactive for less than two years, the board shall adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees to become licensed to regularly practice podiatry within Kansas. Any licensee whose license has been inactive for more than two years and who has not been in the active practice of podiatry or engaged in a formal education program since the licensee has been inactive may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

(j) There is hereby created a designation of federally active license. The board is authorized to issue a federally active license to any licensee who makes written application for such license on a form provided by the board and remits the same fee required for a license established under K.S.A. 65-2012, and amendments thereto. The board may issue a federally active license only to a person who meets all the requirements for a license to practice podiatry in Kansas and who practices podiatry solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies or who, in addition to such employment or assignment, provides professional services as a charitable health care provider as defined under K.S.A. 75-6102, and amendments thereto. The provisions of subsections (b) and (c) of this section relating to expiration, renewal and reinstatement of a license and K.S.A. 65-2010, and amendments thereto, relating to continuing education shall be applicable to a federally active license issued under this subsection. A person who practices under a federally active license shall not be deemed to be rendering professional service as a health care provider in this state for purposes of K.S.A. 40-3402, and amendments thereto.

(k) Each license or permit granted under this act shall be conspicuously displayed at the office or other place of practice of the licensee or permittee.

(l) A person whose license has been revoked may apply for reinstatement of the license after the expiration of three years from the effective date of the revocation. Application for reinstatement shall be on a form provided by the board and shall be accompanied by a reinstatement of a revoked license fee established by the board under K.S.A. 65-2012, and amendments thereto. The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement of the license. If the board determines a license should not be reinstated, the person shall not be eligible to reapply for reinstatement for three years from the effective date of the denial. All proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The board, on its own motion, may stay the effectiveness of an order of revocation of license.

Sec. 137. K.S.A. 2009 Supp. 65-2305 is hereby amended to read as follows: 65-2305. (a) The secretary of health and environment shall have

the power and authority and is hereby charged with the duty of enforcing the provisions of this act, and the secretary is hereby authorized and directed to make, amend or revoke rules and regulations and orders for the efficient enforcement of this act.

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

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

(d) All orders and rules and regulations adopted by the secretary pursuant to this act shall become effective as provided by law.

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

(f) All administrative proceedings conducted pursuant to article 23 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedures act and the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. In conducting the hearing the secretary or the presiding officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the presiding officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter about which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

Sec. 138. K.S.A. 2009 Supp. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by this act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any

way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose, or except that employees of the office of child support enforcement of the federal department of health and human services shall be provided information when the information is necessary to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act or except that the secretary of social and rehabilitation services or the secretary's designee performing child support enforcement functions pursuant to title IV-D of the federal social security act shall be provided information and copies of birth certificates when the information is necessary to establish parentage in legal actions or to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act. Nothing in this subsection shall be construed as exempting such employees of the federal department of health and human services or the secretary of social and rehabilitation services or the secretary's designee from the fees prescribed by K.S.A. 65-2418, and amendments thereto.

(c) Except as provided in subsection (b), and amendments thereto, the state registrar shall not permit inspection of the records or issue a certified copy or abstract of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the *Kansas judicial review act* for judicial review and civil enforcement of agency actions, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made.

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county and the clerk of the district court in each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting records of their offices and by the clerk of the district court in each county for the purpose of correcting juror information for such county. Information provided under this subsection to the clerk of the district court shall be considered confidential and shall not be disclosed to the public. The provisions of subsection (b) of K.S.A. 45-229, and amendments thereto, shall not apply to the provisions of this subsection.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or abstract or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. 65-2409a and amendments thereto shall only be used as permitted by title IV-D of the federal social security act and amendments thereto or as permitted by section 7(a) of the federal privacy act of 1974 and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409a and amendments thereto available to the department of

social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) Fact of death information may be disseminated to state and federal agencies administering benefit programs. Such information shall be used for file clearance purposes only.

Sec. 139. K.S.A. 65-2844 is hereby amended to read as follows: 65-2844. A person whose license has been revoked may apply for reinstatement of the license after the expiration of three years from the effective date of the revocation. Application for reinstatement shall be on a form provided by the board and shall be accompanied by a reinstatement of a revoked license fee established by the board under K.S.A. 65-2852 and amendments thereto. The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement of the license. If the board determines a license should not be reinstated, the person shall not be eligible to reapply for reinstatement for three years from the effective date of the denial. All proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The board, on its own motion, may stay the effectiveness of an order of revocation of license.

Sec. 140. K.S.A. 65-2851a is hereby amended to read as follows: 65-2851a. (a) All administrative proceedings provided for by article 28 of chapter 65 of the Kansas Statutes Annotated and affecting any licensee licensed under that article shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Judicial review and civil enforcement of any agency action under article 28 of chapter 65 of the Kansas Statutes Annotated shall be in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 141. K.S.A. 2009 Supp. 65-2912 is hereby amended to read as follows: 65-2912. (a) The board may refuse to grant a license to any physical therapist or a certificate to any physical therapist assistant, or may suspend or revoke the license of any licensed physical therapist or certificate of any certified physical therapist assistant, or may limit the license of any licensed physical therapist or certificate of any certified physical therapist assistant or may censure a licensed physical therapist or certified physical therapist assistant for any of the following grounds:

- (1) Addiction to or distribution of intoxicating liquors or drugs for other than lawful purposes;
- (2) conviction of a felony if the board determines, after investigation, that the physical therapist or physical therapist assistant has not been sufficiently rehabilitated to warrant the public trust;
- (3) obtaining or attempting to obtain licensure or certification by fraud or deception;
- (4) finding by a court of competent jurisdiction that the physical therapist or physical therapist assistant is a disabled person and has not thereafter been restored to legal capacity;
- (5) unprofessional conduct as defined by rules and regulations adopted by the board;
- (6) the treatment or attempt to treat ailments or other health conditions of human beings other than by physical therapy and as authorized by this act;
- (7) failure to refer patients to other health care providers if symptoms are present for which physical therapy treatment is inadvisable or if symptoms indicate conditions for which treatment is outside the scope of knowledge of the licensed physical therapist;
- (8) evaluating or treating patients in a manner not consistent with K.S.A. 2009 Supp. 65-2921 and amendments thereto; and
- (9) knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

(b) All proceedings pursuant to article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 142. K.S.A. 2009 Supp. 65-3008a is hereby amended to read as follows: 65-3008a. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing, and shall affirm the issuance of any permit the terms and conditions of which comply with all requirements established by rules and regulations promulgated pursuant to the Kansas air quality act. Any person who participated in the public comment process or the public hearing who otherwise would have standing under K.S.A. 77-611, and amendments thereto, shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out in subsection (a) may be required prior to the issuance, modification, renewal or reopening of an approval.

Sec. 143. K.S.A. 65-3312 is hereby amended to read as follows: 65-3312. Any action of the secretary of health and environment pursuant to this act is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 144. K.S.A. 65-3412 is hereby amended to read as follows: 65-3412. Any person aggrieved by an order or disapproval of the secretary pursuant to K.S.A. 65-3411 and amendments thereto may, within 15 days of service of the order, request in writing a hearing on the order. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 145. K.S.A. 65-3417 is hereby amended to read as follows: 65-3417. (a) In developing solid waste plans or the implementation of a solid waste program in conformance with K.S.A. 65-3401 through 65-3415, and amendments thereto and rules and regulations adopted thereunder, cities, counties or multiples or combinations thereof shall consider demographic and geographic differences within their area of jurisdiction in promulgating solid waste plans and programs, and the board shall consider the demographic and geographic variations in giving approval or denying approval of such plans and programs.

(b) Any action of the secretary pursuant to the provisions of article 34 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 146. K.S.A. 65-3419 is hereby amended to read as follows: 65-3419. (a) Any person who violates any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$5,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, may impose a penalty within the limits provided

in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the secretary of health and environment. Any such person may, within 15 days after service of the order, make written request to the secretary for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c) is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or rules and regulations adopted pursuant thereto, or any orders issued pursuant thereto, or any permit conditions required thereby, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner, generator, transporter or the operator of the processing, treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard or threatened or actual violation, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in paragraph (1) or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices or threatened acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices or intends to engage in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this paragraph (2) shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under paragraph (1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this paragraph (3) for a court order shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

Sec. 147. K.S.A. 65-3424l is hereby amended to read as follows: 65-3424l. (a) Any person adversely affected by any order or decision of the secretary pursuant to K.S.A. 65-3424 through 65-3424i, and amendments thereto, may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 148. K.S.A. 65-3440 is hereby amended to read as follows: 65-3440. Any person aggrieved by any order or denial of the secretary, may

within 15 days of service of the order request in writing a hearing on the order. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person adversely affected by any action of the secretary pursuant to this section may obtain review of such action in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 149. K.S.A. 65-3446 is hereby amended to read as follows: 65-3446. (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of K.S.A. 65-3441 and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 150. K.S.A. 65-3456a is hereby amended to read as follows: 65-3456a. (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 151. K.S.A. 65-3458 is hereby amended to read as follows: 65-3458. (a) The underground burial of hazardous waste produced by persons generating quantities of such waste greater than those specified in K.S.A. 65-3451 and amendments thereto is prohibited except as provided by order of the secretary of health and environment issued pursuant to this act. Such prohibition shall not be construed as prohibiting mound landfill, aboveground storage, land treatment or underground injection of hazardous waste. Any existing hazardous waste facility which utilizes underground burial shall cease such practice and, with the approval of the secretary, shall implement closure and postclosure plans for all units of the facility in which hazardous wastes have been disposed of underground.

(b) (1) The secretary shall decide whether or not an exception to the prohibition against underground burial of hazardous waste shall be granted for a particular hazardous waste. No decision to grant an exception shall be rendered unless it is demonstrated to the secretary that, except for underground burial, no economically reasonable or technologically feasible methodology exists for the disposal of a particular hazardous waste. The procedures for obtaining an exception to the prohibition against underground burial of hazardous waste shall include a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act and such other procedures as are established and prescribed by rules and regulations adopted by the secretary. Such rules and regulations shall include requirements for the form and contents of a petition desiring an exception.

(2) Within 90 days after submission of a petition desiring an excep-

tion, and if the secretary decides to grant an exception to the prohibition against underground burial of hazardous waste, the secretary of health and environment shall issue an order so providing. Any action by the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 152. K.S.A. 2009 Supp. 65-3490 is hereby amended to read as follows: 65-3490. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.

(c) Any party aggrieved by an order under this section may obtain review of such order in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 153. K.S.A. 65-34,106 is hereby amended to read as follows: 65-34,106. (a) No person shall construct, install, modify or operate a storage tank unless a permit or other approval is obtained from the secretary. Applications for permits shall include proof that the required performance standards will be met and applications for underground storage tank permits shall include evidence of financial responsibility. For purposes of administering this section, any underground storage tank registered with the department on May 18, 1989, and any aboveground storage tank registered with the department on July 1, 1992, shall be deemed to be a permitted storage tank so long as the owner or operator shall comply with all applicable provisions of this act.

(b) Permits may be transferred upon acceptance of the permit obligations by the person who is to assume the ownership or operational responsibility of the storage tank from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the department not less than seven days prior to the transfer of ownership or operational responsibility of the storage tank.

(c) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this act if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, that the person has:

- (1) Fraudulently or deceptively obtained or attempted to obtain a storage tank permit;
- (2) failed at any time to maintain a storage tank in accordance with the requirements of this act or any rule and regulation promulgated hereunder;
- (3) failed at any time to comply with the requirements of this act or any rule and regulation promulgated hereunder; or
- (4) failed at any time to make any retrofit or improvement to a storage tank which is required by this act or any rule and regulation promulgated hereunder.

(d) Any person aggrieved by an order of the secretary may appeal the order in accordance with provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 154. K.S.A. 2009 Supp. 65-34,113 is hereby amended to read as follows: 65-34,113. (a) Any person who violates any provisions of K.S.A. 65-34,109 or 65-34,110, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 65-34,109 or 65-34,110, and amendments thereto, may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. Operating a storage tank without a permit issued pursuant to K.S.A. 65-34,106, and amendments thereto, shall be deemed to constitute such a hazard. The action the secretary may take shall include, but is not limited to:

(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

Sec. 155. K.S.A. 65-34,122 is hereby amended to read as follows: 65-34,122. (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 156. K.S.A. 65-34,153 is hereby amended to read as follows: 65-34,153. (a) Any person adversely affected by any order or decision of the director of the division of environment or the secretary under this act may, within 15 days of service of the order or decision, make a written request for a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any final action of the secretary pursuant to this act may obtain a review of the action in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 157. K.S.A. 65-4015 is hereby amended to read as follows: 65-4015. The secretary, after notice and opportunity for hearing to the applicant or licensee, may deny, suspend or revoke a license if the secretary finds that there has been a substantial failure to comply with the requirements established under this act. Such notice shall fix a date, not less than 30 days from the date of such notice, at which the applicant or licensee shall be given an opportunity for a hearing.

Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Any action of the secretary under this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 158. K.S.A. 65-4120 is hereby amended to read as follows: 65-4120. Any action of the board pursuant to the uniform controlled substances act is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 159. K.S.A. 65-4211 is hereby amended to read as follows: 65-4211. (a) Any person aggrieved by a decision of the board, and affected thereby, shall be entitled to judicial review in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(b) Any party may have review of the final judgment or decision of the district court by appeal to the supreme court pursuant to the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 160. K.S.A. 65-4509 is hereby amended to read as follows: 65-4509. Any action of the secretary pursuant to K.S.A. 65-4501 through 65-4517, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 161. K.S.A. 65-5310 is hereby amended to read as follows: 65-5310. (a) The secretary may deny, suspend or revoke any license issued under this act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for license or licensee, whichever is applicable, has:

(1) Fraudulently or deceptively obtained or attempted to obtain a license;

(2) failed at any time to meet the qualifications for a license or to comply with any provision or requirement of this act or any rules and regulations adopted by the secretary under this act;

(3) failed at any time to meet any applicable federal or state standard for removal or encapsulation of asbestos; or

(4) employed or permitted an uncertified individual person to work on an asbestos project.

(b) The secretary may deny, suspend or revoke any certificate issued

under this act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for certificate or certificate holder, whichever is applicable, has:

(1) Fraudulently or deceptively obtained or attempted to obtain a certificate; or

(2) failed at any time to meet the qualifications for a certificate or to comply with any provision or requirement of this act or any rules and regulations adopted by the secretary under this act.

(c) Before any license or certificate is denied, suspended or revoked, the secretary shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(d) Any individual person or business entity aggrieved by a decision or order of the secretary may appeal the order or decision in accordance with the provisions of the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~.

(e) (1) If the secretary finds that the public health or safety is endangered by the continuation of an asbestos project, the secretary may temporarily suspend, without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act, the license of the business entity or the certificate of any person engaging in such asbestos project.

(2) In no case shall a temporary suspension of a license or certificate under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the license or certificate shall be reinstated unless the secretary has suspended or revoked the license or certificate, after notice and hearing, or the license has expired as otherwise provided under this act.

Sec. 162. K.S.A. 65-5314 is hereby amended to read as follows: 65-5314. (a) Any business entity which violates any provision of this act or any rules and regulations adopted under this act, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The secretary, upon a finding that a business entity has violated any provision of this act or any rules and regulations adopted under this act, may impose a civil penalty within the limits provided in this section upon such business entity, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

(c) No civil penalty shall be imposed under this section except upon the written order of the secretary after notification and hearing, if a hearing is requested, in accordance with the provisions of the Kansas administrative procedure act.

(d) Any business entity aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~. An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary shall refund forthwith the payment of any civil penalty to the business entity with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the penalty.

(e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

Sec. 163. K.S.A. 65-5315 is hereby amended to read as follows: 65-5315. Notwithstanding the existence or pursuit of any other remedy, the secretary may maintain, in the manner provided by the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~, an action in the name of the state of Kansas for injunction or other process against any business entity to restrain or prevent any violation of the provisions of this act or of any rules and regulations adopted under this act.

Sec. 164. K.S.A. 65-5416 is hereby amended to read as follows: 65-5416. All state agency adjudicative proceedings under K.S.A. 65-5401 to

65-5417, inclusive, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 165. K.S.A. 65-5516 is hereby amended to read as follows: 65-5516. All state agency adjudicative proceedings under K.S.A. 65-5501 to 65-5517, inclusive, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 166. K.S.A. 65-5815 is hereby amended to read as follows: 65-5815. Proceedings under the professional counselors licensure act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under the professional counselors licensure act shall be in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 167. K.S.A. 65-6412 is hereby amended to read as follows: 65-6412. Proceedings under the marriage and family therapists licensure act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under the marriage and family therapists licensure act shall be in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 168. K.S.A. 65-6509 is hereby amended to read as follows: 65-6509. Proceedings under this act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under this act shall be in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 169. K.S.A. 65-7009 is hereby amended to read as follows: 65-7009. (a) Any order of the secretary issued pursuant to this act is subject to the provisions of the Kansas administrative procedure act.

(b) Any final action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 170. K.S.A. 65-7010 is hereby amended to read as follows: 65-7010. (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act may impose a penalty not to exceed \$25,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to appeal to the secretary for a hearing thereon. Any person may appeal an order by making a written request to the secretary for a hearing within 15 days of service of such order. Proceedings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any sum assessed under this section shall be deposited in the chemical control fund.

(d) Any final action of the secretary pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 171. K.S.A. 65-7216 is hereby amended to read as follows: 65-7216. (a) All state agency adjudicative proceedings under the naturopathic doctor registration act shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

(b) The provisions of this section shall take effect on and after January 1, 2003.

Sec. 172. K.S.A. 2009 Supp. 65-7313 is hereby amended to read as follows: 65-7313. (a) The license of a radiologic technologist may be limited, suspended or revoked, or the licensee may be censured, reprimanded, fined pursuant to K.S.A. 65-2863a, and amendments thereto, or otherwise sanctioned by the board or an application for licensure may be denied if it is found that the licensee or applicant:

(1) Is guilty of fraud or deceit in the procurement or holding of a license;

(2) has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted or if the holder has been pardoned with full restoration of civil rights in which case the license shall be restored;

(3) is addicted to or has distributed intoxicating liquors or drugs for other than lawful purposes;

(4) is found to be mentally or physically incapacitated to such a degree that in the opinion of the board continued practice by the licensee would constitute a danger to the public's health and safety;

(5) has aided and abetted a person who is not a licensee under this act or is not otherwise authorized to perform the duties of a license holder;

(6) has undertaken or engaged in any practice beyond the scope of duties permitted a licensee;

(7) has engaged in the practice of radiologic technology under a false or assumed name or impersonated another licensee;

(8) has been found guilty of unprofessional conduct under criteria which the board may establish by rules and regulations;

(9) has interpreted a diagnostic image to a patient; or

(10) is, or has been, found guilty of incompetence or negligence while performing as a license holder.

(b) The denial, refusal to renew, suspension, limitation or revocation of a license or other sanction may be ordered by the board after notice and hearing on the matter in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(c) A person whose license is suspended shall not engage in any conduct or activity in violation of the order by which the license was suspended.

(d) This section shall take effect on and after July 1, 2005.

Sec. 173. K.S.A. 66-118c is hereby amended to read as follows: 66-118c. Any action of the commission pursuant to K.S.A. 66-118b and amendments thereto is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 174. K.S.A. 66-1,164 is hereby amended to read as follows: 66-1,164. Any action of the commission pursuant to K.S.A. 66-1,163 and amendments thereto is subject to review by the supreme court in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. The supreme court, in its discretion, may require the appellant to file an appeal bond, conditioned on payment of all court costs incurred incidental to such appeal.

Sec. 175. K.S.A. 68-2213 is hereby amended to read as follows: 68-2213. The secretary of transportation may deny the application of any person for a certificate of compliance under this act and may suspend or revoke a certificate of compliance issued or refuse to issue a renewal thereof. Orders under this section, and proceedings thereon, are subject to the provisions of the Kansas administrative procedure act and are subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 176. K.S.A. 2009 Supp. 68-2240 is hereby amended to read as follows: 68-2240. (a) Any advertising structure erected or maintained adjacent to the right-of-way of the interstate or primary highway system after the effective date of this act as determined by K.S.A. 68-2231 through 68-2244, and amendments thereto, in violation of the provisions

of this section or rules and regulations adopted by the secretary, or maintained without a permit for construction and a current license shall be considered illegal and shall be subject to removal. The department or its agent shall give 60-days notice by certified mail to the owner of the illegal sign and the landowner, if different from the sign owner, except that the department shall give 10-days notice to the owner of unlawful portable outdoor advertising located on vehicles or stands to remove such advertising structure or make it comply with the provisions of this act. Such notice shall contain a statement that the sign owner has the right to appeal the removal of such sign in accordance with the Kansas administrative procedure act and may appeal that decision to the district court. If such owner is unknown or cannot be reasonably ascertained, the department shall conclude that the advertiser shown on the sign is the owner of the sign. Unless the sign owner appeals in accordance with the provisions of subsection (e), the department or its agents shall have the right to remove the illegal advertising structure, at the expense of the owner, if the owner fails to remove the advertising structure or to make it comply with the provisions of this act within the required period cited in this section. If no appeal by the sign owner has been filed, after giving a 10-day notice to the sign owner and landowner, the department or its agents may enter upon private property for the purpose of removing the illegal advertising structure prohibited by this act or by the rules and regulations adopted by the secretary without civil or criminal liability. The cost of removing the advertising structure, whether by the department or its agents, shall be assessed against the owner of the illegal structure.

(b) A sign owner is prohibited from repairing and erecting a legal, non-conforming sign which sustains damage in excess of 60% of its replacement cost. This prohibition includes signs which have been damaged or destroyed by natural causes. An exception is made for those signs which were destroyed by vandalism or other criminal or ~~tortious~~ *tortious* acts.

(c) A sign is considered a new sign and requires a new sign license if the sign is abandoned, left blank or remains dilapidated for a period of 12 months. Signs faces displaying public service announcements or displaying a “for rent” notice will not be considered abandoned.

(d) Any person, firm, corporation or association, placing, erecting or maintaining advertising structures, signs, displays or devices along the interstate system or primary system in violation of this act or rules and regulations adopted by the secretary shall not be recognized as advertisement for outdoor purposes and therefore constitutes a public nuisance subject to removal as provided by law.

(e) *Right to Appeal.* (1) Sign owners who are notified under subsection (a) to remove a sign determined to be in noncompliance of this act may appeal such order to the secretary of transportation. Hearings under this paragraph shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(2) Any party aggrieved by the order of the secretary may appeal such order to the district court in accordance with the provisions of the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions.~~

Sec. 177. K.S.A. 2009 Supp. 72-974 is hereby amended to read as follows: 72-974. (a) Written notice of the result of any hearing provided for under this act shall be given to the agency providing for the hearing and shall be sent by certified mail to the parent, or attorney of the child within 24 hours after the result is determined. Such decision, after deletion of any personally identifiable information contained therein, shall be transmitted to the state board which shall make the decision available to the state advisory council for special education and to the public upon request.

(b) (1) Any party to a due process hearing provided for under this act may appeal the decision to the state board by filing a written notice of appeal with the commissioner of education not later than 30 calendar days after the date of the postmark on the written notice specified in subsection (a). A review officer appointed by the state board shall conduct an impartial review of the decision. The review officer shall render a decision not later than 20 calendar days after the notice of appeal is filed. The review officer shall: (A) Examine the record of the hearing; (B) determine whether the procedures at the hearing were in accordance with

the requirements of due process; (C) afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer; (D) seek additional evidence if necessary; (E) render an independent decision on any such appeal not later than five days after completion of the review; and (F) send the decision on any such appeal to the parties and to the state board.

(2) For the purpose of reviewing any hearing and decision under provision (1), the state board may appoint one or more review officers. Any such appointment may apply to a review of a particular hearing or to reviewing a set or class of hearings as specified by the state board in making the appointment.

(c) Subject to the provisions of subsection (e), any action of a review officer pursuant to this section is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions* or to an action in federal court as allowed by the federal law.

(d) Consistent with state court actions, any action in federal court shall be filed within 30 days after service of the review officer's decision.

(e) In any action brought under subsection (c), the court:

(1) Shall receive the records of the administrative proceedings;

(2) if it deems necessary, shall hear additional evidence at the request of a party;

(3) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate; and

(4) in accordance with the federal law, may award attorneys' fees to the prevailing party in any due process hearing or judicial action brought in accordance with this act.

Sec. 178. K.S.A. 72-5430a is hereby amended to read as follows: 72-5430a. (a) Any controversy concerning prohibited practices may be submitted to the secretary. Proceedings against the party alleged to have committed a prohibited practice shall be commenced within six months of the date of the alleged practice by service upon it by the secretary of a written notice, together with a copy of the charges. The accused party shall have 20 days within which to serve a written answer to the charges, unless the secretary determines an emergency exists and requires the accused party to serve a written answer to the charges within 24 hours of receipt. Hearings on prohibited practices shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the board determines an emergency exists, the board shall follow the procedures contained in K.S.A. 77-536 and amendments thereto. A strike or lockout shall be construed to be an emergency.

(b) The secretary shall either dismiss the complaint or determine that a prohibited practice has been or is being committed, and shall enter a final order granting or denying in whole or in part the relief sought. Any action of the secretary pursuant to this subsection is subject to review and enforcement in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Venue of the action for review is the judicial district where the principal offices of the pertinent board of education are located.

The action for review shall be by trial *de novo* with or without a jury in accordance with the provisions of K.S.A. 60-238 and amendments thereto, and the court may, in its discretion, permit any party or the secretary to submit additional evidence on any issue. The action for review shall be heard and determined by the court as expeditiously as possible.

(c) If there is an alleged violation of either subsection (b)(8) or (c)(5) of K.S.A. 72-5430 and amendments thereto, the aggrieved party or the secretary is authorized to seek relief in district court.

Sec. 179. K.S.A. 2009 Supp. 74-596 is hereby amended to read as follows: 74-596. (a) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the

~~Kansas judicial review act for judicial review and civil enforcement of agency actions.~~

(b) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, in an intentional or reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of *or* health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, by injunction.

Sec. 180. K.S.A. 2009 Supp. 74-598 is hereby amended to read as follows: 74-598. (a) The secretary of agriculture may deny, suspend, revoke, refuse to renew or modify the provisions of any license issued under the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, if the secretary finds that the applicant or licensee has:

(1) Been convicted of or pleaded guilty to a violation of any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(2) failed to comply with any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder.

(b) The secretary shall inform the applicant or licensee of the opportunity for a hearing pursuant to the Kansas administrative procedure act before any license shall be denied, suspended, modified, revoked or denied renewal.

(c) The licensee or applicant may appeal from the decision and order, in accordance with provisions of the ~~Kansas judicial review act for judicial review and civil enforcement of agency actions.~~

Sec. 181. K.S.A. 74-719 is hereby amended to read as follows: 74-719. Any action of the director of workers' compensation pursuant to K.S.A. 74-712 through 74-718, and amendments thereto, is subject to

review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 182. K.S.A. 2009 Supp. 74-2426 is hereby amended to read as follows: 74-2426. (a) Orders of the state court of tax appeals on any appeal, in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding before the court shall be rendered and served in accordance with the provisions of the Kansas administrative procedure act. Notwithstanding the provisions of subsection (g) of K.S.A. 77-526, and amendments thereto, a final order of the court shall be rendered in writing and served within 120 days after the matter was fully submitted to the court unless this period is waived or extended with the written consent of all parties or for good cause shown.

(b) No final order of the court shall be subject to review pursuant to subsection (c) unless the aggrieved party first files a petition for reconsideration of that order with the court in accordance with the provisions of K.S.A. 77-529, and amendments thereto.

(c) Any action of the court pursuant to this section is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~, except that:

(1) The parties to the action for judicial review shall be the same parties as appeared before the court in the administrative proceedings before the court. The court shall not be a party to any action for judicial review of an action of the court.

(2) There is no right to review of any order issued by the court in a no-fund warrant proceeding pursuant to K.S.A. 12-110a, 12-1662 et seq., 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and statutes of a similar character. The court of appeals has jurisdiction for review of all final orders issued after June 30, 2008, in all other cases.

(3) In addition to the cost of the preparation of the transcript, the appellant shall pay to the state court of tax appeals the other costs of certifying the record to the reviewing court. Such payment shall be made prior to the transmission of the agency record to the reviewing court.

(d) If review of an order of the state court of tax appeals relating to excise, income or inheritance taxes, is sought by a person other than the director of taxation, such person shall give bond for costs at the time the petition is filed. The bond shall be in the amount of 125% of the amount of taxes assessed or a lesser amount approved by the court of appeals and shall be conditioned on the petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

(e) If review of an order is sought by a party other than the director of property valuation or a taxing subdivision and the order determines, approves, modifies or equalizes the amount of valuation which is assessable and for which the tax has not been paid, a bond shall be given in the amount of 125% of the amount of the taxes assessed or a lesser amount approved by the reviewing court. The bond shall be conditioned on the petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

Sec. 183. K.S.A. 2009 Supp. 74-32,173 is hereby amended to read as follows: 74-32,173. Any action of the state board pursuant to K.S.A. 2009 Supp. 74-32,170, 74-32,171 or 74-32,172, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. If it appears to the state board on the basis of its own inquiries or investigations or as a result of a complaint that any provision of this act has been or may be violated, the state board may request the attorney general to institute an action enjoining such violation or for an order directing compliance with the provisions of this act.

Sec. 184. K.S.A. 74-5337 is hereby amended to read as follows: 74-5337. Any action of the board upon a hearing pursuant to K.S.A. 74-5330 and amendments thereto is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 185. K.S.A. 2009 Supp. 74-5369 is hereby amended to read as follows: 74-5369. An application for licensure under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, may be denied or a license granted under this act may be suspended, limited, revoked, have a con-

dition placed on it or not renewed by the board upon proof that the applicant or licensee:

- (a) Has been convicted of a felony involving moral turpitude;
- (b) has been found guilty of fraud or deceit in connection with the rendering of professional services or in establishing such person's qualifications under this act;
- (c) has aided or abetted a person not licensed as a psychologist, licensed under this act or an uncertified assistant, to hold oneself out as a psychologist in this state;
- (d) has been guilty of unprofessional conduct as defined by rules and regulations of the board;
- (e) has been guilty of neglect or wrongful duties in the performance of duties; or
- (f) has had a registration, license or certificate as a masters level psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for a registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Administrative proceedings under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, shall be in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 186. K.S.A. 2009 Supp. 74-5616 is hereby amended to read as follows: 74-5616. (a) No person shall be appointed as a full-time law enforcement officer unless the person holds a full-time active law enforcement certificate or a provisional law enforcement certificate. No person shall be appointed as a part-time officer unless the person holds a full-time active law enforcement certificate, a part-time active law enforcement certificate or a provisional certificate. The commission's certification shall be awarded to persons who:

- (1) Received a permanent appointment as a police officer or law enforcement officer prior to July 1, 1969; or
- (2) hold a permanent appointment as a police officer or law enforcement officer on July 1, 1983.

(b) The commission may suspend, revoke, reprimand, censure or deny the certification of a police officer or law enforcement officer who:

- (1) Fails to meet the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto, or has met such requirements by falsifying documents or failing to disclose information required for certification;
- (2) fails to meet and maintain the minimum standards for certification adopted by the commission;
- (3) provides false information or otherwise fails to cooperate in a commission investigation to determine a person's suitability for law enforcement certification;
- (4) fails to complete the annual continuing education required by K.S.A. 74-5607a, and amendments thereto, and implementing rules and regulations or otherwise fails to comply with the requirements of this act; or
- (5) fails to maintain the requirements for initial certification as set forth in K.S.A. 74-5605, and amendments thereto, and any implementing rules and regulations.

(c) The commission shall immediately institute proceedings to revoke the certification of any police officer or law enforcement officer convicted of, or on or after July 1, 1995, diverted for a felony under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice or convicted of or diverted for a misdemeanor crime of domestic violence under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice, when such misdemeanor crime of domestic violence was committed on or after the effective date of this act.

(d) The procedure for the public or private censure, reprimand, probation, suspension, revocation and denial of certification of a person as a police officer or law enforcement officer or an applicant for certification shall be in accordance with the Kansas administrative procedure act.

(e) Any action of the commission pursuant to subsection (d) is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Upon request of the commission, the attorney general shall prosecute or defend any action for review on behalf of the state, but the county or district attorney of the county where the police or law enforcement officer has been employed as such shall appear and prosecute or defend such action upon request of the attorney general or commission. The commission may elect to retain the services of a private attorney to appear and prosecute or defend any action on behalf of the commission.

Sec. 187. K.S.A. 2009 Supp. 74-5617 is hereby amended to read as follows: 74-5617. (a) Every candidate for appointment to a position as a police officer or law enforcement officer shall hold permanent or provisional certification.

(b) For the purpose of determining the eligibility of an individual for certification under this act, the commission may require the submission of training and education records, and experience history, medical history, medical examination reports and records, and interview appraisal forms.

(c) Law enforcement agencies in Kansas shall be responsible for their agency's observance of the hiring requirements of this section.

(d) No law enforcement agency head or other appointing authority shall knowingly permit the hiring of any person in violation of the requirements of this act, or knowingly permit the continued employment of any person as a law enforcement officer after receiving written notice from the commission that the person does not hold an active law enforcement certificate. No law enforcement agency head or other appointing authority shall knowingly permit any auxiliary personnel who have been convicted of a felony offense under the laws of Kansas or any other jurisdiction access to law enforcement records or communication systems that are restricted under state or federal law or appoint as auxiliary personnel any person who does not meet the requirements of K.S.A. 74-5605 and amendments thereto. Any violation of the requirements of this act shall be deemed to constitute misconduct in office and shall subject the agency head or appointing authority to:

(1) Removal from office pursuant to K.S.A. 60-1205 and amendments thereto; or (2) a civil penalty in a sum set by the court of not to exceed \$500 for each occurrence of noncompliance in an action brought in the district court, which penalty shall be paid to the state treasurer for deposit in the state treasury and credit to the Kansas commission on peace officers' standards and training fund.

(e) Whenever in the judgment of the commission any person has engaged in any acts or practices which constitute a violation of this act, or any rules and regulations of the commission, the commission may make application to the district court, without giving bond, for civil enforcement of this act or rules and regulations in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The district or county attorney of any county shall at the request of the commission render such legal assistance as necessary in carrying out the provisions of this act. Upon the request of the commission, the district or county attorney of the proper county shall institute in the name of the state or commission proceedings for appropriate relief, whether mandatory, injunctive or declaratory, preliminary or final, temporary or permanent, equitable or legal, against any person regarding whom a complaint has been made charging such person with the violation of any provision of this act.

(f) The commission shall make such inquiry as necessary to determine compliance with the requirements of this section and the rules and regulations adopted under it.

(g) It shall be the responsibility of the agency head to ensure that every police officer or law enforcement officer under their supervision has the opportunity to receive the mandatory training as prescribed in K.S.A. 74-5604a and amendments thereto.

Sec. 188. K.S.A. 74-7028 is hereby amended to read as follows: 74-7028. Notice of the action of the board in denying, suspending or revoking a license or certificate of authorization issued under K.S.A. 74-7036, and amendments thereto, shall be given in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any

decision of the board may appeal such action in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 189. K.S.A. 74-7030 is hereby amended to read as follows: 74-7030. Whenever in the judgment of the board any person has engaged in, or is about to engage in, any acts or practices which constitute, or will constitute, a violation of this act, or any rules and regulations of the board, the board may make application to the district court, without giving bond, for civil enforcement of the act or rules and regulations in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 190. K.S.A. 74-7315 is hereby amended to read as follows: 74-7315. (a) The board, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The board shall reconsider, at least annually, every award upon which periodic payments are being made. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

(b) A final decision of the board shall be subject to judicial review on the filing of a petition by the claimant, the attorney general or the offender in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 191. K.S.A. 74-8813 is hereby amended to read as follows: 74-8813. (a) A nonprofit organization may apply to the commission for an organization license to conduct horse races or an organization license to conduct greyhound races, or both such licenses. In addition, an organization license may authorize the licensee to construct or own a racetrack facility if so provided by the commission. The application for an organization license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall specify the days when and the exact location where it proposes to conduct such races and shall be in a form and include such information as the commission prescribes. A nonrefundable application fee in the form of a certified check or bank draft shall accompany the application. Except as provided pursuant to K.S.A. 74-8814, and amendments thereto, such fee shall be \$5,000 for each application. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(b) If an applicant for an organization license is proposing to construct a racetrack facility, such applicant, at the time of submitting the application, shall deposit with the commission, in such form as prescribed by rules and regulations of the commission, the sum of: (1) \$500,000, if the number of racing days applied for in a racing season is 150 days or more; (2) \$250,000, if the number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant meets the qualifications set forth in subsection (a)(1) or (a)(2) of K.S.A. 74-8814, and amendments thereto, or if the applicant will be conducting races only on the state fairgrounds. Only one such deposit shall be required for a dual racetrack facility. The executive director shall remit any deposit received pursuant to this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the racing applicant deposit fund created by K.S.A. 74-8828, and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon comple-

tion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(c) To qualify for an organization license to conduct horse or greyhound races:

(1) The applicant shall be a bona fide, nonprofit organization which, if applicable, meets the requirements of subsection (d);

(2) the applicant shall have, either by itself or through contractual relationships with other persons or businesses approved by the commission, the financial capability, manpower and technical expertise, as determined by the commission, to properly conduct horse races or greyhound races, or both, and, if applicable, to operate a parimutuel wagering system;

(3) if the applicant is proposing to construct a racetrack facility, the applicant shall submit detailed plans for the construction of such facility, including the means and source of financing such construction and operation, sufficient to convince the commission that such plans are feasible;

(4) submit for commission approval a written copy of each contract and agreement which the applicant proposes to enter into, including all those listed in subsection (n), which contracts and agreements shall conform to the restrictions placed thereon by subsections (n), (o) and (p);

(5) the applicant shall propose to conduct races within only one county, and in such county the majority of the qualified electors have approved either: (A) The constitutional amendment permitting the conduct of horse and dog races and parimutuel wagering thereon; or (B) a proposition permitting horse and dog races and parimutuel wagering thereon within the boundaries of such county;

(6) no director, officer, employee or agent of the applicant shall have been convicted of any of the following in any court of any state or of the United States or shall have been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute any of the following: (A) Fixing of horse or greyhound races; (B) illegal gambling activity; (C) illegal sale or possession of any controlled substance; (D) operation of any illegal business; (E) repeated acts of violence; or (F) any felony;

(7) no director or officer of the applicant shall be addicted to, and a user of, alcohol or a controlled substance; and

(8) no director or officer of the applicant shall have failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(d) To qualify for an organization license to conduct horse or greyhound races, a nonprofit organization, other than a fair association, a horsemen's nonprofit organization or a nonprofit organization conducting races only on the state fair grounds, shall:

(1) Distribute all of its net earnings from the conduct of horse and greyhound races, other than that portion of the net earnings which is necessary to satisfy the debt service obligations, not otherwise deducted from net earnings, of an organization licensee owning the racetrack facility or that portion of the net earnings which is set aside as reasonable reserves for future improvement, maintenance and repair of the racetrack facility owned by the organization licensee, only to organizations, other than itself, which: (A) Have been exempted from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as in effect July 1, 1987, (B) are domiciled in this state and (C) expend the moneys so distributed only within this state;

(2) distribute not more than 25% of such net earnings to any one such organization in any calendar year;

(3) not engage in, and have no officer, director or member who engages in, any prohibited transaction, as defined by section 503(b) of the federal internal revenue code of 1986, as in effect July 1, 1987; and

(4) have no officer, director or member who is not a bona fide resident of this state.

(e) Within 30 days after the date specified for filing, the commission shall examine each application for an organization license for compliance with the provisions of this act and rules and regulations of the commission. If any application does not comply with the provisions of this act or rules

and regulations of the commission, the application may be rejected or the commission may direct the applicant to comply with the provisions of this act or rules and regulations of the commission within a reasonable time, as determined by the commission. Upon proof by the applicant of compliance, the commission may reconsider the application. If an application is found to be in compliance and the commission finds that the issuance of the license would be within the best interests of horse and greyhound racing within this state from the standpoint of both the public interest and the horse or greyhound industry, as determined solely within the discretion of the commission, the commission may issue an organization license to the applicant. The commission shall approve the issuance of organization licenses for a period established by the commission but not to exceed 25 years. Such license may provide that during its term it constitutes an exclusive license within a radius of the location specified in the license, as determined by the commission. No racing of any kind regulated by this act shall be conducted by any other person within the territory covered by such exclusive license without the written consent of the licensee. For each license issued, the commission shall specify the location, type, time and date of all races and race meetings which the commission has approved for the licensee to conduct. The license shall be issued upon receipt of the license fee and the furnishing of a surety bond or other financial security approved by the commission, conditioned on, and in an amount determined by the commission as sufficient to pay, the licensee's potential financial liability for unpaid taxes, purses and distribution of parimutuel winnings and breakage. No organization license shall be transferred to any other organization or entity.

(f) When considering the granting of organization licenses or racing days between two or more competing applicants, the commission shall give consideration to the following factors:

(1) The character, reputation, experience and financial stability of those persons within the applicant organizations who will be supervising the conduct of the races and parimutuel wagering for the organization;

(2) the quality of the racing facilities and adjoining accommodations;

(3) the amount of revenue that can reasonably be expected to be generated from state and local taxes, the economic impact for the respective horse or greyhound breeding industries in Kansas and the indirect economic benefit to the surrounding area, in the determination of which economic benefit the commission shall solicit written recommendations from all interested parties in the surrounding area;

(4) the location of the race meetings in relation to the principal centers of population and the effect of such centers on the ability of the organizations to sustain a financially sound racing operation; and

(5) testimony from interested parties at public hearings to be conducted in the geographic areas where the applicants would be conducting their race meetings.

(g) Except as otherwise provided pursuant to K.S.A. 74-8814, and amendments thereto, each organization licensee shall pay a license fee in the amount of \$200 for each day of racing approved by the commission. Such fees shall be paid at such times and by such means as prescribed by rules and regulations of the commission. The commission may authorize the state treasurer to refund from the state racing fund a fee paid for any racing day which was canceled with advance notice to and with the approval of the commission.

(h) Organization licensees may apply to the commission for changes in approved race meetings or dates or for additional race meetings or dates as needed throughout the terms of their licenses. Application shall be made upon forms furnished by the commission and shall contain or be accompanied by such information as the commission prescribes. Upon approval by the commission, the organization licensee shall pay an additional license fee for any race days in excess of the number originally approved and included in the calculation of the initial license fee.

(i) All organization licenses shall be reviewed annually by the commission to determine if the licensee is complying with the provisions of this act and rules and regulations of the commission and following such proposed plans and operating procedures as were approved by the commission. The commission may review an organization license more often than annually upon its own initiative or upon the request of any interested party. The commission shall require each organization licensee, other

than a fair association, or horsemen's nonprofit organization, to file annually with the commission a certified financial audit of the licensee by an independent certified public accountant, which audit shall be open to inspection by the public, and may require an organization licensee to provide any other information necessary for the commission to conduct the annual or periodic review.

(j) Subject to the provisions of subsection (k), the commission, in accordance with the Kansas administrative procedure act, may suspend or revoke an organization license or may impose a civil fine not exceeding \$5,000, or may both suspend such license and impose such fine, for each of the following violations by a licensee:

(1) One or more violations, or a pattern of repeated violations, of the provisions of this act or rules and regulations of the commission;

(2) failure to follow one or more provisions of the licensee's plans for the financing, construction or operation of a racetrack facility as submitted to and approved by the commission;

(3) failure to maintain compliance with the requirements of subsection (c) or (d), if applicable, for the initial issuance of an organization license;

(4) failure to properly maintain or to make available to the commission such financial and other records sufficient to permit the commission to verify the licensee's nonprofit status and compliance with the provisions of this act or rules and regulations of the commission;

(5) providing to the commission any information material to the issuance, maintenance or renewal of the licensee's license knowing such information to be false or misleading;

(6) failure to meet the licensee's financial obligations incurred in connection with the conduct of a race meeting; or

(7) a violation of K.S.A. 74-8833, and amendments thereto, or any rules and regulations adopted pursuant to that section.

(k) Prior to suspension or revocation of a license pursuant to subsection (j), the commission shall give written notice of the reason therefor in detail to the organization licensee and to all facility owner and facility manager licensees with whom the organization licensee is doing business. Upon receipt of such notice by all of such licensees, the organization licensee shall have 30 days in which to cure the alleged violation, if it can be cured. If the commission finds that the violation has not been cured upon expiration of the 30 days, or upon a later deadline granted by the commission, or if the commission finds that the alleged violation is of such a nature that it cannot be cured, the commission shall proceed to suspend or revoke the license pursuant to subsection (j). Nothing in this subsection shall be construed to preclude the commission from imposing a fine pursuant to subsection (j) even if the violation is cured within 30 days or such other period as provided by the commission.

(l) Prior to the expiration of an organization license, the organization may apply to the commission for renewal of such license. The renewal application shall be in a form and include such information as the commission prescribes. The commission shall grant such renewal if the organization meets all of the qualifications required for an initial license. The commission may charge a fee for the processing of the renewal application not to exceed the application fee authorized for an initial license.

(m) Once an organization license has been issued, no person thereafter and during the term of such license shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership or become a director or officer of such organization licensee without first having obtained the written approval of the commission.

(n) An organization licensee shall submit to the commission for approval a copy of each contract and agreement which the organization licensee proposes to enter into and any proposed modification of any such contract or agreement, including but not limited to those involving:

(1) Any person to be employed by the organization licensee;

(2) any person supplying goods and services to the organization licensee, including management, consulting or other professional services;

(3) any lease of facilities, including real estate or equipment or other personal property; or

(4) the operation of any concession within or adjacent to the racetrack facility.

The commission shall reject any such contract or agreement which violates any provision of this act or rules and regulations of the commission, which provides for payment of money or other valuable consideration which is clearly in excess of the fair market value of the goods, services or facilities being purchased or leased or which, in the case of a contract or agreement with a facility owner licensee or a facility manager licensee, would not protect the organization licensee from incurring losses due to contractual liability.

(o) Organization licensees shall not by lease, contract, agreement, understanding or arrangement of any kind grant, assign or turn over to any person the parimutuel system of wagering described in K.S.A. 74-8819, and amendments thereto, or the operation and conduct of any horse or greyhound race to which such wagering applies, but this subsection shall not prohibit the organization licensee from contracting with and compensating others for providing services in connection with the financing, acquisition, construction, equipping, maintenance and management of the racetrack facility; the hiring and training of personnel; the promotion of the facility; operation and conduct of a simulcast race displayed by a simulcasting licensee; parimutuel wagering at racetrack facilities; and parimutuel wagering at off-track wagering and intertrack wagering facilities in other jurisdictions to which live races conducted by the organization licensee are simulcast.

(p) An organization licensee shall not in any manner permit a person other than such licensee to have a share, percentage or proportion of money received from parimutuel wagering at the racetrack facility except as specifically set forth in this act, except that:

(1) A facility owner licensee may receive gross percentage rental fees under a lease if all terms of the lease are disclosed to the commission and such lease is approved by the commission;

(2) a person who has contracted with an organization licensee to provide one or more of the services permitted by subsection (o) may receive compensation in the form of a percentage of the money received from parimutuel wagering if such contract is approved by the commission and such person is licensed as a facility manager; and

(3) a person who has contracted with a simulcasting licensee to allow such licensee to display a simulcast race conducted by such person may receive compensation in the form of a percentage of or a fee deducted from the money received by the licensee from parimutuel wagers placed on such race if such contract is filed with the commission.

(q) Directors or officers of an organization licensee are not liable in a civil action for damages arising from their acts or omissions when acting as individual directors or officers, or as a board as a whole, of a nonprofit organization conducting races pursuant to this act, unless such conduct constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the directors and officers are not required to be insured by law or are not otherwise insured against such acts or omissions. Nothing in this section shall be construed to affect the liability of an organization licensee for damages in a civil action caused by the negligent or wrongful acts or omissions of its directors or officers, and a director's or officer's negligence or wrongful act or omission, while acting as a director or officer, shall be imputed to the organization licensee for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a, and amendments thereto.

(r) If an applicant for an organization license proposes to construct a racetrack facility and the commission determines that such license should be issued to the applicant, the commission shall issue to the applicant an organization license conditioned on the submission by the licensee to the commission, within a period of time prescribed by the commission, of a commitment for financing the construction of the racetrack facility by a financial institution or other source, subject to approval by the commission. If such commitment is not submitted within the period of time originally prescribed by the commission or such additional time as authorized by the commission, the license shall expire at the end of such period.

(s) If an organization licensee's license authorizes the construction of a dual racetrack facility, such license shall be conditioned on the completion of such facility within a time specified by the commission. If, within the time specified by the commission, the licensee has not constructed a

dual racetrack facility in accordance with the plans submitted to the commission pursuant to subsection (c)(3), the commission, in accordance with the Kansas administrative procedure act, shall:

(1) Impose upon the licensee a civil fine equal to 5% of the total parimutuel pools for all races held at the licensee's facility on and after the date that racing with parimutuel wagering is first conducted at such facility and until the date that construction of the dual racetrack facility is completed and horse racing has begun; and

(2) revoke the licensee's license unless the licensee demonstrates reasonable cause for the failure to complete the facility.

(t) Any license granted an organization licensee to conduct races at a dual racetrack facility shall be conditioned on the organization licensee's conducting live horse races on not less than 20% of the annual racing days granted the licensee by the commission. If an organization licensee fails to comply with such condition, the commission may revoke the organization licensee's license unless the licensee demonstrates reasonable justification for the failure.

(u) The refusal to renew an organization license shall be in accordance with the Kansas administrative procedure act and shall be subject to review under the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(v) The grant or denial of an original organization license shall not be subject to the Kansas administrative procedure act. Such grant or denial shall be a matter to be determined in the sole discretion of the commission, whose decision shall be final upon the grant of a license to one of two or more competing applicants without the necessity of a hearing on the denial of a license to each other competing applicant. Any action for judicial review of such decision shall be by appeal to the supreme court in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~, except that the scope of review shall be limited to whether the action of the commission was arbitrary or capricious or constituted an abuse of discretion. All competing applicants for the organization license shall be parties to such appeal. Any such appeal shall have priority over other cases except those having statutory priority.

(w) The commission may adopt rules and regulations regulating crossover employment between organization licensees and facility manager licensees and facility owner licensees.

Sec. 192. K.S.A. 74-8815 is hereby amended to read as follows: 74-8815. (a) Any person, partnership, corporation or association, or the state of Kansas or any political subdivision thereof, may apply to the commission for a facility owner license to construct or own, or both, a racetrack facility which includes a racetrack and other areas designed for horse racing or greyhound racing, or both.

(b) Any person, partnership, corporation or association may apply to the commission for a facility manager license to manage a racetrack facility.

(c) A facility owner license or a facility manager license shall be issued for a period established by the commission but not to exceed 25 years. The application for a facility owner license shall be accompanied by a nonrefundable fee of \$5,000. An application for a facility manager license shall be accompanied by a nonrefundable fee of \$5,000. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(d) If an applicant for a facility owner license is proposing to construct a racetrack facility, such applicant, at the time of submitting the application, shall deposit with the commission, in such form as prescribed by rules and regulations of the commission, the sum of: (1) \$500,000, if the number of racing days applied for by organization licensee applicants proposing to race at the facility is 150 days or more in a racing season;

(2) \$250,000, if such number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant is the state or a political subdivision of the state. Only one such deposit shall be required for a dual racetrack facility. The executive director shall remit any deposit received pursuant to this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the racing applicant deposit fund created by K.S.A. 74-8828, and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon completion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(e) A facility owner license shall be granted only to an applicant that already owns an existing racetrack facility or has submitted with its application detailed plans for the construction of such facility, including the means and source of financing such construction and operation sufficient to convince the commission that such plans are feasible. A facility manager license shall be granted only to an applicant that has a facility management contract with an organization licensed pursuant to K.S.A. 74-8813, and amendments thereto.

(f) An applicant for a facility owner license or facility manager license, or both, shall not be granted a license if there is substantial evidence that the applicant for the license, or any officer or director, stockholder, member or owner of or other person having a financial interest in the applicant:

(1) Has been suspended or ordered to cease operation of a parimutuel racing facility in another jurisdiction by the appropriate authorities in that jurisdiction, has been ordered to cease association or affiliation with such a racing facility or has been banned from such a racing facility;

(2) has been convicted by a court of any state or of the United States of any criminal act involving fixing or manipulation of parimutuel races, violation of any law involving gambling or controlled substances or drug violations involving horses or greyhounds, or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a criminal act, or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted or adjudicated;

(3) has been convicted by a court of any state or of the United States of any felony involving dishonesty, fraud, theft, counterfeiting, alcohol violations or embezzlement, or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a felony, or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted or adjudicated;

(4) has not demonstrated financial responsibility sufficient to meet the obligations being undertaken pursuant to its contract with the organization licensee;

(5) is not in fact the person or entity authorized to or engaged in the licensed activity;

(6) is or becomes subject to a contract or option to purchase under which 10% or more of the ownership or other financial interest or membership interest are subject to purchase or transfer, unless the contract or option has been disclosed to the commission and the commission has approved the sale or transfer during the license period;

(7) has made a statement of a material fact in the application or otherwise in response to official inquiry by the commission knowing such statement to be false; or

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

(g) No person or entity shall be qualified to hold a facility manager license if such person or entity, or any director, officer, employee or agent thereof, is addicted to, and a user of, alcohol or a controlled substance.

(h) All facility owner licenses and facility manager licenses shall be reviewed annually by the commission to determine if the licensee is complying with the provisions of this act and rules and regulations of the commission and following such proposed plans and operating procedures as were approved by the commission. The commission may review a facility owner license or facility manager license more often than annually upon its own initiative or upon the request of any interested party. The commission shall require each facility owner licensee and each facility manager licensee to file annually with the commission a certified financial audit of the licensee by an independent certified public accountant, which audit shall be open to inspection by the public, and may require any such licensee to provide any other information necessary for the commission to conduct the annual or periodic review.

(i) Subject to the provisions of subsection (j), the commission, in accordance with the Kansas administrative procedure act, may suspend or revoke a facility owner or facility manager license or may impose a civil fine not exceeding \$10,000 per failure or violation, or may both suspend such license and impose such fine, if the commission finds probable cause to believe that:

(1) In the case of a facility owner licensee, the licensee has failed to follow one or more provisions of the licensee's plans for the financing, construction or operation of a racetrack facility as submitted to and approved by the commission; or

(2) in the case of either a facility owner licensee or facility manager licensee, the licensee has violated any of the terms and conditions of licensure provided by this section or any other provision of this act or any rule and regulation of the commission.

(j) Prior to suspension or revocation of a license pursuant to subsection (i), the commission shall give written notice of the reason therefor to the licensee and all other interested parties. The licensee shall have 30 days from receipt of the notice to cure the alleged failure or violation, if it can be cured. If the commission finds that the failure or violation has not been cured upon expiration of the 30 days or upon a later deadline granted by the commission, or if the alleged violation is of such a nature that it cannot be cured, the commission may proceed to suspend or revoke the licensee's license pursuant to subsection (i). Nothing in this subsection shall be construed to preclude the commission from imposing a fine pursuant to subsection (i) even if the violation is cured within 30 days or such other period as provided by the commission.

(k) If an applicant for a facility owner license proposes to construct a racetrack facility and the commission determines that such license should be issued to the applicant, the commission shall issue to the applicant a facility owner license conditioned on the submission by the licensee to the commission, within a period of time prescribed by the commission, of a commitment for financing the construction of the racetrack facility by a financial institution or other source, subject to approval by the commission. If such commitment is not submitted within the period of time originally prescribed by the commission or such additional time as authorized by the commission, the license shall expire at the end of such period.

(l) If a facility owner licensee's license authorizes the construction of a dual racetrack facility, such license shall be conditioned on the completion of such facility within a time specified by the commission. If, within the time specified by the commission, the licensee has not constructed a dual racetrack facility in accordance with the plans submitted to the commission pursuant to subsection (e), the commission, in accordance with the Kansas administrative procedure act, shall:

(1) Impose upon the licensee a civil fine equal to 5% of the total parimutuel pools for all races held at the licensee's facility on and after the date that racing with parimutuel wagering is first conducted at such facility and until the date that construction of the dual racetrack facility is completed and horse racing has begun; and

(2) revoke the licensee's license unless the licensee demonstrates reasonable cause for the failure to complete the facility.

(m) The refusal to renew a facility owner license or a facility manager

license shall be in accordance with the Kansas administrative procedure act and shall be subject to review under the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(n) The grant or denial of an original facility owner license or facility manager license shall not be subject to the Kansas administrative procedure act. Such grant or denial shall be a matter to be determined in the sole discretion of the commission, whose decision shall be final upon the grant of a license to one of two or more competing applicants without the necessity of a hearing on the denial of a license to each other competing applicant. Any action for judicial review of such decision shall be by appeal to the supreme court in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, except that the scope of review shall be limited to whether the action of the commission was arbitrary or capricious or constituted an abuse of discretion. All competing applicants for the facility owner license or facility manager license shall be parties to such appeal. Any such appeal shall have priority over other cases except those having statutory priority.

(o) The commission may adopt rules and regulations regulating cross-over employment between facility manager licensees and facility owner licensees and organization licensees.

Sec. 193. K.S.A. 2009 Supp. 75-7c07 is hereby amended to read as follows: 75-7c07. (a) In accordance with the provisions of the Kansas administrative procedure act, the attorney general shall deny a license to any applicant for license who is ineligible under K.S.A. 2009 Supp. 75-7c04, and amendments thereto, and, except as provided by subsection (b), shall revoke at any time the license of any person who would be ineligible under K.S.A. 2009 Supp. 75-7c04, and amendments thereto, if submitting an application for a license at such time or who fails to submit evidence of completion of a weapons safety and training course as required by subsection (c) of K.S.A. 2009 Supp. 75-7c04, and amendments thereto. Any review by the district court in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions* shall be in Shawnee county. The revocation shall remain in effect pending any appeal and shall not be stayed by the court.

(b) The license of a person who would be ineligible pursuant to subsection (a)(6) of K.S.A. 2009 Supp. 75-7c04, and amendments thereto, shall be subject to suspension and shall be reinstated upon final disposition of the charge as long as the person is otherwise eligible for a license.

(c) The sheriff of the county where a restraining order is issued that would prohibit issuance of a license under subsection (a) (13) of K.S.A. 2009 Supp. 75-7c04, and amendments thereto, shall notify the attorney general immediately upon receipt of such order. If the person subject to the restraining order holds a license issued pursuant to this act, the attorney general immediately shall revoke such license upon receipt of notice of the issuance of such order. The attorney general shall adopt rules and regulations establishing procedures which allow for 24-hour notification and revocation of a license under the circumstances described in this subsection.

Sec. 194. K.S.A. 2009 Supp. 75-2714 is hereby amended to read as follows: 75-2714. (a) Each agency and political subdivision of this state shall cooperate with the state historical society in its administration of the property under the society's jurisdiction and control in order to preserve the historic character and integrity thereof. The society may enter into agreements with any such agency or subdivision, with any agency of the federal government or with any private individual or entity concerning the construction or proposed construction of any road, street, highway or structure which, due to its proximity to property under the society's jurisdiction and control, would compromise the historic character or integrity of such property.

(b) No agency or political subdivision of the state and no other entity shall exercise the power of eminent domain with respect to any property under the society's jurisdiction and control without the prior written approval of the society. No such agency, subdivision or entity and no other person shall change or alter, or cause to be changed or altered, the physical features or historic character or integrity of such property without the prior written approval of the society. Within 20 days after receipt of notice of the society's refusal to grant such approval, which notice shall

be sent by registered or restricted mail, any party aggrieved by the decision of the society may make written application to the secretary of state for a hearing thereon. Such hearing shall be held by the secretary of state within 30 days after receipt of the application therefor and shall be conducted in accordance with the provisions of the Kansas administrative procedure act, with the applicant and the society as parties thereto. Following the hearing, the secretary of state shall enter an order affirming, reversing or modifying the decision of the society. The decision of the secretary of state shall be subject to appeal in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, K.S.A. 77-601 et seq., and amendments thereto.

(c) The attorney general, on relation of the state historical society or the secretary of state, shall file an action in the appropriate district court to enjoin any agency or political subdivision of the state or any other person or entity from doing any act in contravention of an order of the secretary of state or from doing any act contemplated by subsection (b) of this section without the prior written approval of the state historical society, unless authority to do such act has been granted by the secretary of state pursuant to that subsection.

Sec. 195. K.S.A. 2009 Supp. 75-2724 is hereby amended to read as follows: 75-2724. (a) The state or any political subdivision of the state, or any instrumentality thereof, shall not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property until the state historic preservation officer has been given notice, as provided herein, and an opportunity to investigate and comment upon the proposed project. Notice to the state historic preservation officer shall be given by the state or any political subdivision of the state when the proposed project, or any portion thereof, is located within 500 feet of the boundaries of a historic property located within the corporate limits of a city, or within 1,000 feet of the boundaries of a historic property located in the unincorporated portion of a county. Notwithstanding the notice herein required, nothing in this section shall be interpreted as limiting the authority of the state historic preservation officer to investigate, comment and make the determinations otherwise permitted by this section regardless of the proximity of any proposed project to the boundaries of a historic property. The state historic preservation officer may solicit the advice and recommendations of the historic sites board of review with respect to such project and may direct that a public hearing or hearings be held thereon. Any such public hearing or hearings held pursuant to this subsection or held pursuant to authority delegated by the state historical preservation officer under subsection (e) or (f) shall be held within 60 days from the date of receipt of notice by the state historical preservation officer from the state or any political subdivision of the state as provided herein. If the state historic preservation officer determines, with or without having been given notice of the proposed project, that such proposed project will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property, such project shall not proceed until:

(1) The governor, in the case of a project of the state or an instrumentality thereof, or the governing body of the political subdivision, in the case of a project of a political subdivision or an instrumentality thereof, has made a determination, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use; and

(2) five days notice of such determination has been given, by certified mail, to the state historic preservation officer.

(b) Any person aggrieved by the determination of the governor pursuant to this section may seek review of such determination in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Any person aggrieved by the determination of a governing body pursuant to this section may seek review of such determination in accordance with K.S.A. 60-2101 and amendments thereto.

(c) The failure of the state historic preservation officer to initiate an

investigation of any proposed project within 30 days from the date of receipt of notice thereof shall constitute such officer's approval of such project.

(d) Failure of any person or entity to apply for and obtain the proper or required building or demolition permit before undertaking a project that will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places, or the environs of such property, shall be subject to a civil penalty not to exceed \$25,000 for each violation. The attorney general may seek such penalties and other relief through actions filed in district court.

(e) (1) The state historic preservation officer may enter into an agreement authorizing a city or county to make recommendations or to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c) if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the manner in which the city or county shall report its decisions to the state historic preservation officer, the conditions under which the city or county can request assistance from the state historic preservation officer in performing certain project reviews, the length of time the agreement is to be valid and provisions for termination of the agreement. Such agreement shall provide that the state historic preservation officer shall retain final authority to implement the provisions of this act. The state historic preservation officer shall adopt any rules and regulations necessary to implement the provisions of this subsection.

(2) An agreement with a city or county authorized by this subsection shall not be construed as limiting the authority of the state historic preservation officer to investigate, comment and make determinations otherwise permitted by this section.

(f) The state historic preservation officer may enter into agreements with the state board of regents or any state educational institution under the control and supervision of the state board of regents to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c).

Sec. 196. K.S.A. 75-2748 is hereby amended to read as follows: 75-2748. (a) On and after January 1, 1990, no person shall, unless such person holds a permit issued by the board to do so or is exempt pursuant to subsection (b):

- (1) Willfully disturb an unmarked burial site;
 - (2) knowingly possess human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains;
 - (3) display human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains;
 - (4) sell, trade or give away human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains;
- or
- (5) throw away or discard human skeletal remains known to have been from an unmarked burial site, or goods interred with such remains.

(b) Subsection (a)(2) shall not apply to possession of human skeletal remains or burial goods by the state historical society or institutions of higher education represented on the Kansas antiquities commission pursuant to K.S.A. 74-5402 and amendments thereto, but the board, in consultation with interested parties, shall review the collections of such society and institutions and report to the legislature on or before January 13, 1992, any recommendations it has concerning human skeletal remains and burial goods which are part of such collections and are from unmarked burial sites. Subsections (a)(1) through (5) shall not apply to:

- (1) Disinterment, possession, display, transfer, reinterment or disposition of human skeletal remains, or goods interred with such remains, which are determined by a coroner to be remains described by K.S.A. 22a-231 and amendments thereto; and
 - (2) private collections of burial goods acquired prior to January 1, 1990.
- (c) Violation of this section is a crime punishable:

(1) Upon conviction of a first offense, by a fine of not more than \$10,000, if the commercial and archeological value of the remains and goods involved and all costs related to their restoration and repair is \$5,000 or less;

(2) upon conviction of a first offense, by a fine of not more than \$20,000, if the commercial and archeological value of the remains and goods involved and all costs related to their restoration and repair is more than \$5,000; and

(3) upon conviction of the second or a subsequent offense, by a fine of not more than \$100,000.

(d) In addition to or in lieu of any penalty imposed pursuant to subsection (c), the board, upon a finding that a person has violated any provision of this section or any term of a permit issued under this act, may impose on such person a civil fine of not more than \$2,000 for each violation. Imposition of any such fine shall be only upon notice and a hearing conducted in accordance with the Kansas administrative procedure act and shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 197. K.S.A. 75-2929h is hereby amended to read as follows: 75-2929h. Subject to the provisions of this section, the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ shall be applicable to appeals from orders of the civil service board. In any such appeal, the civil service board shall not be a named party to the proceedings. Parties to such appeals shall be: (a) The aggrieved employee, former employee or applicant; (b) the state agency that took the action that was appealed to the civil service board; and (c) any party the district court permits to intervene in the district court action. An order of the civil service board may be affirmed, reversed or modified by the district court on appeal. Applications for a stay or other temporary remedies shall be to the state agency that took the action that was appealed to the civil service board.

Sec. 198. K.S.A. 2009 Supp. 75-2973 is hereby amended to read as follows: 75-2973. (a) This section shall be known and may be cited as the Kansas whistleblower act.

(b) As used in this section:

(1) “Auditing agency” means the (A) legislative post auditor, (B) any employee of the division of post audit, (C) any firm performing audit services pursuant to a contract with the post auditor, (D) any state agency or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities, or (E) the inspector general created under K.S.A. 2009 Supp. 75-7427 and amendments thereto.

(2) “Disciplinary action” means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work.

(3) “State agency” and “firm” have the meanings provided by K.S.A. 46-1112 and amendments thereto.

(c) No supervisor or appointing authority of any state agency shall prohibit any employee of the state agency from discussing the operations of the state agency or other matters of public concern, including matters relating to the public health, safety and welfare either specifically or generally, with any member of the legislature or any auditing agency.

(d) No supervisor or appointing authority of any state agency shall:

(1) Prohibit any employee of the state agency from reporting any violation of state or federal law or rules and regulations to any person, agency or organization; or

(2) require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

(e) This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative or auditing agency requests for information to the state agency or the substance of testimony made, or to be made, by the employee to legislators or the auditing agency, as the case may be, on behalf of the state agency;

(2) permitting an employee to leave the employee’s assigned work

areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee or by an auditing agency to appear at a meeting with officials of the auditing agency;

(3) authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) prohibiting disciplinary action of an employee who discloses information which: (A) The employee knows to be false or which the employee discloses with reckless disregard for its truth or falsity, (B) the employee knows to be exempt from required disclosure under the open records act, or (C) is confidential or privileged under statute or court rule.

(f) Any officer or employee of a state agency who is in the classified service and has permanent status under the Kansas civil service act may appeal to the state civil service board whenever the officer or employee alleges that disciplinary action was taken against the officer or employee in violation of this act. The appeal shall be filed within 90 days after the alleged disciplinary action. Procedures governing the appeal shall be in accordance with subsections (f) and (g) of K.S.A. 75-2949 and amendments thereto and K.S.A. 75-2929d through 75-2929g and amendments thereto. If the board finds that disciplinary action taken was unreasonable, the board shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this act, it may require as a penalty that the violator be suspended on leave without pay for not more than 30 days or, in cases of willful or repeated violations, may require that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The board may award the prevailing party all or a portion of the costs of the proceedings before the board, including reasonable attorney fees and witness fees. The decision of the board pursuant to this subsection may be appealed by any party pursuant to law. On appeal, the court may award the prevailing party all or a portion of the costs of the appeal, including reasonable attorney fees and witness fees.

(g) Each state agency shall prominently post a copy of this act in locations where it can reasonably be expected to come to the attention of all employees of the state agency.

(h) Any officer or employee who is in the unclassified service under the Kansas civil service act who alleges that disciplinary action has been taken against such officer or employee in violation of this section may bring an action pursuant to the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~ within 90 days after the occurrence of the alleged violation. The court may award the prevailing party in the action all or a portion of the costs of the action, including reasonable attorney fees and witness fees.

(i) Nothing in this section shall be construed to authorize disclosure of any information or communication that is confidential or privileged under statute or court rule.

Sec. 199. K.S.A. 2009 Supp. 75-3307b is hereby amended to read as follows: 75-3307b. (a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for persons with mental illness, developmental disabilities or other persons with disabilities is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any

state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities for persons with mental illness, developmental disabilities or other persons with disabilities receiving assistance through the department of social and rehabilitation services which receive or have received after June 30, 1967, any state or federal funds, or facilities where persons with mental illness or developmental disabilities reside who require supervision or require limited assistance with the taking of medication, and the withdrawal of licenses granted for causes shown. The secretary may adopt rules and regulations that allow the facility to assist a resident with the taking of medication when the medication is in a labeled container dispensed by a pharmacist. No license for a residential facility for eight or more persons may be issued under this paragraph unless the secretary of health and environment has approved the facility as meeting the licensing standards for a lodging establishment under the food service and lodging act. No license for a residential facility for the elderly or for a residential facility for persons with disabilities not related to mental illness or developmental disability, or both, or related conditions shall be issued under this paragraph;

(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for persons with developmental disabilities and facilities serving other persons with disabilities receiving assistance through the department of social and rehabilitation services.

(b) An entity holding a license as a community mental health center under paragraph (4) of subsection (a) on the day immediately preceding the effective date of this act, but which does not meet the definition of a community mental health center set forth in this act, shall continue to be licensed as a community mental health center as long as the entity remains affiliated with a licensed community mental health center and continues to meet the licensing standards established by the secretary.

(c) Notwithstanding the existence or pursuit of any other remedy, the secretary of social and rehabilitation services, as the licensing agency, in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*, may maintain an action in the name of the state of Kansas for injunction against any person or facility to restrain or prevent the operation of a psychiatric hospital, community mental health center or facility for persons with mental illness, developmental disabilities or other persons with disabilities operating without a license.

(d) The secretary of social and rehabilitation services shall license and inspect any facility or provider of residential services which serves two or more residents who are not self-directing their services and which is subject to licensure under subsection (a)(5) of this section, unless the provider of services is already licensed to provide such services.

Sec. 200. K.S.A. 75-3342 is hereby amended to read as follows: 75-3342. Notwithstanding other provisions of this act, any blind person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of this act or other relevant statutes, shall be entitled to and shall have standing for judicial review thereof in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 201. K.S.A. 75-4330 is hereby amended to read as follows: 75-4330. (a) The scope of a memorandum of agreement may extend to all matters relating to conditions of employment, except proposals relating to (1) any subject preempted by federal or state law or by a municipal ordinance passed under the provisions of section 5 of article 12 of the Kansas constitution; (2) public employee rights defined in K.S.A. 75-4324 and amendments thereto; (3) public employer rights defined in K.S.A. 75-4326 and amendments thereto; or (4) the authority and power of any civil service commission, personnel board, personnel agency or its agents established by statute, ordinance or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence, from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer

served by such civil service commission or personnel board. Any memorandum of agreement relating to conditions of employment entered into may be executed for a maximum period of three years, notwithstanding the provisions of the cash-basis law contained in K.S.A. 10-1102 *et seq.*, and amendments thereto, and the budget law contained in K.S.A. 79-2925 *et seq.*, and amendments thereto.

(b) Such memorandum agreement may contain a grievance procedure and may provide for the impartial arbitration of any disputes that arise on the interpretation of the memorandum agreement. Such arbitration shall be advisory or final and binding, as determined by the agreement, and may provide for the use of a fact-finding board. The public employee relations board is authorized to establish rules for procedure of arbitration in the event the agreement has not established such rules. In the absence of arbitrary and capricious rulings by the fact-finding board during arbitration, the decision of that board shall be final. Judicial review shall be in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(c) Notwithstanding the other provisions of this section and the act of which this section is a part, when a memorandum of agreement applies to the state or to any state agency, the memorandum of agreement shall not be effective as to any matter requiring passage of legislation or state finance council approval, until approved as provided in this subsection. When executed, each memorandum of agreement shall be submitted to the state finance council. Any part or parts of a memorandum of agreement which relate to a matter which can be implemented by amendment of rules and regulations of the secretary of administration or by amendment of the pay plan and pay schedules of the state may be approved or rejected by the state finance council, and if approved, shall thereupon be implemented by it to become effective at such time or times as it specifies. Any part or parts of a memorandum of agreement which require passage of legislation for the implementation thereof shall be submitted to the legislature at its next regular session, and if approved by the legislature shall become effective on a date specified by the legislature.

Sec. 202. K.S.A. 75-4334 is hereby amended to read as follows: 75-4334. (a) Any controversy concerning prohibited practices may be submitted to the board. Proceedings against the party alleged to have committed a prohibited practice shall be commenced within six months of the date of such alleged practice by service upon the accused party by the board of a written notice, together with a copy of the charges. The accused party shall have seven days within which to serve a written answer to such charges, unless the board determines an emergency exists and requires the accused party to serve a written answer to such charges within 24 hours of their receipt. Hearings on prohibited practices shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the board determines an emergency exists, the board may use emergency adjudicative proceedings as provided in K.S.A. 77-536 and amendments thereto. A strike or lockout shall be construed to be an emergency. The board may use its rulemaking power, as provided in K.S.A. 75-4323 and amendments thereto, to make any other procedural rules it deems necessary to carry on this function.

(b) The board shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the board finds that the party accused has committed or is committing a prohibited practice, the board shall make findings as authorized by this act and shall file them in the proceedings.

(c) Any action of the board pursuant to subsection (b) is subject to review and enforcement in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The procedures for obtaining injunction and allied remedies shall be as set forth in the code of civil procedure, except that the provisions of K.S.A. 60-904 and amendments thereto shall not control injunction actions arising out of public employer-employee relations under this act.

(d) If there is an alleged violation of either subsection (b)(8) or (c)(5) of K.S.A. 75-4333 and amendments thereto, the aggrieved party is authorized to seek relief in district court in the manner provided for the board in subsection (c) while proceedings on such prohibited practices are pending before the board. Any ruling of the district court shall remain

in effect until set aside by the court on motion of the parties or of the board or upon review of the board's order as provided by subsection (c).

Sec. 203. K.S.A. 75-5951 is hereby amended to read as follows: 75-5951. (a) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred long-term care programs, and which is lawfully commenced, or could have been commenced, by or against the secretary of social and rehabilitation services in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of social and rehabilitation services in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(b) No suit, action or other proceeding, judicial or administrative, pertaining to the transferred long-term care programs which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

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

(d) Any final appeal decision of the department of social and rehabilitation services entered pursuant to K.S.A. 75-3306, and amendments thereto, or the Kansas *judicial review* act ~~for judicial review and civil enforcement of agency actions~~ currently pertaining to any long-term care program transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

Sec. 204. K.S.A. 2009 Supp. 75-6207 is hereby amended to read as follows: 75-6207. (a) If the director receives a timely written request for a hearing under K.S.A. 75-6206 and amendments thereto, the director shall request a presiding officer from the office of administrative hearings who shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether the debt claim is valid. Subject to the provisions of subsection (b), the presiding officer shall determine whether the claimed sum asserted as due and owing is correct, and if not, shall order an adjustment to the debt claim which shall be forwarded to the director and to the state agency, foreign state agency or municipality to which the debt is owed. No issue may be considered at the hearing which has been previously litigated and no collateral attack on any judgment shall be permitted at the hearing. The order of the presiding officer shall inform the debtor of the amount determined as due, if any, and that setoff procedures have been ordered to proceed in accordance with this act. If the setoff is to be made against earnings of the debtor, the order shall include a statement that the setoff may be postponed in accordance with K.S.A. 75-6208 and amendments thereto. Orders under this section shall not be subject to administrative review.

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

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

(d) Judicial review of an order under this section shall be in accordance with the provisions of the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~. In any such review, except as provided in subsection (e), the department of administration and the secretary of administration shall not be named parties to the proceedings.

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

Sec. 205. K.S.A. 2009 Supp. 76-11a11 is hereby amended to read as follows: 76-11a11. (a) Unless otherwise agreed to by both the state board

and the teacher, the hearing officer shall render a written decision not later than 30 days after the close of the hearing, setting forth the hearing officer's findings of fact and determination of the issues. The decision of the hearing officer shall be submitted to the teacher and to the state board.

(b) The decision of the hearing officer shall be final, subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 206. K.S.A. 76-12a13 is hereby amended to read as follows: 76-12a13. The secretary may adopt rules and regulations governing parking and operation of vehicles upon the roads, streets, driveways, grounds and parking areas of any one or more institutions. The secretary shall place and maintain such traffic control devices or signs as the secretary shall deem necessary to indicate and to carry out the rules and regulations adopted. The rules and regulations may prescribe fines to be imposed upon any person who violates the rules and regulations or any particular one or more of such rules and regulations. If any fines are prescribed, the rules and regulations shall prescribe administrative procedures for the imposition and collection thereof. Any action pursuant to such procedures is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 207. K.S.A. 77-522 is hereby amended to read as follows: 77-522. (a) Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties. Requests for discovery shall be made in writing to the presiding officer and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery requests. The presiding officer may issue subpoenas, discovery orders and protective orders in accordance with the rules of civil procedure.

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

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

Sec. 208. K.S.A. 77-536 is hereby amended to read as follows: 77-536. (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 *Kansas judicial review 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 feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings under subsection (a).

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

(g) Unless otherwise required by a provision of law, the state agency

record need not constitute the exclusive basis for state agency action in emergency proceedings or for judicial review thereof.

Sec. 209. K.S.A. 77-631 is hereby amended to read as follows: 77-631. (a) A person aggrieved by the failure of an agency to act in a timely manner as required by K.S.A. 77-526 or 77-549, and amendments thereto, or as otherwise required by law, is entitled to interlocutory review of the agency's failure to act.

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

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

Sec. 210. K.S.A. 2009 Supp. 79-4707 is hereby amended to read as follows: 79-4707. (a) The administrator, after a hearing in accordance with the provisions of the Kansas administrative procedure act, may revoke or suspend any license or registration certificate issued under the provisions of this act for any of the following reasons:

(1) The licensee or registrant has obtained the license or registration certificate by giving false information in the application therefor;

(2) the licensee or registrant has violated any of the laws of the state of Kansas or provisions of this act or any rules and regulations adopted pursuant thereto for the registration, licensing, taxing, management, conduct or operation of games of bingo; or

(3) the licensee or registrant has become ineligible to obtain a license under this act.

(b) Any action of the administrator pursuant to subsection (a) is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~. In case of the revocation of the license of any licensee or the registration of any registrant, no new license or registration shall be issued to such lessor, sublessor or organization, or any person acting for or on its behalf, for a period of six months thereafter. No revocation or suspension of a license or registration certificate shall be for a period in excess of one year if the applicant otherwise is qualified on the date the applicant makes a new application therefor.

(c) The administrator is hereby authorized to enjoin any person from managing, operating or conducting any games of bingo, or from leasing any premises for such purposes, if such person does not possess a valid license or registration certificate issued pursuant to the provisions of the bingo act. The administrator shall be entitled to have an order restraining such person from managing, operating or conducting any games of bingo or for any other purpose contrary to the provisions of the bingo act or from leasing premises for any of such purposes. No bond shall be required for any such restraining order, nor for any temporary or permanent injunction issued in such proceedings.

Sec. 211. K.S.A. 2009 Supp. 82a-302 is hereby amended to read as follows: 82a-302. (a) Each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not

an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. Such applicant shall pay all costs associated with the review by the licensed professional engineer.

(b) (1) The application shall be based upon the stage of construction at the time that a complete application has been submitted. The construction in progress fee shall be applicable for construction begun prior to approval by the chief engineer. Such fee shall be in addition to any other penalty for an unpermitted structure. Such fees shall be as follows:

Fees for new dam or dam modification applications	
Pre-Construction	Construction In Progress
\$200	\$500

(2) Permit fees for stream obstructions/channel changes application fee is based upon two criteria and are as follows:

- (A) The drainage area category; and
- (B) the stage of construction when the application is submitted.

Drainage Area Category	Pre-Construction	Construction In Progress
Major (Drainage area greater than 50 square miles)	\$500	\$1000
Moderate (Drainage area 5 to 50 square miles)	\$200	\$400
Minor (Drainage area less than 5 square miles)	\$100	\$200
General Permit	\$100	\$200

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2009 Supp. 82a-328, and amendments thereto.

Sec. 212. K.S.A. 2009 Supp. 82a-724 is hereby amended to read as follows: 82a-724. Any order pursuant to K.S.A. 2009 Supp. 82a-1901 and amendments thereto upon review of any action of the chief engineer pursuant to K.S.A. 82a-704a, 82a-708b, 82a-711 or 82a-718, and amendments thereto, is subject to review in accordance with the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 213. K.S.A. 2009 Supp. 82a-737 is hereby amended to read as follows: 82a-737. (a) As used in this section:

(1) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(2) "Secretary" means the secretary of agriculture.

(b) Any person who commits any of the following may incur a civil penalty as provided by this section:

(1) Any violation of the Kansas water appropriation act (K.S.A. 82a-701 et seq., and amendments thereto) or any rule and regulation adopted thereunder;

(2) any violation of an order issued pursuant to K.S.A. 82a-1038, and amendments thereto, relating to an intensive groundwater use control area; or

(3) any violation of a term, condition or limitation imposed by the chief engineer as authorized by law, including, but not limited to: (A) Diversion of water from an unauthorized point of diversion; (B) failure to limit the use of water to the authorized place of use; (C) failure to submit or comply with the terms of conservation plans as required pur-

suant to K.S.A. 82a-733, and amendments thereto; (D) failure to comply with the maximum annual quantity or rate of diversion authorized; (E) failure to properly install, maintain or assure the accuracy of acceptable water measurement devices; (F) failure to comply with orders related to minimum desirable stream flow, unlawful diversion, impairment of senior water rights or waste of water; or (G) failure to limit the use of water to an authorized type of use.

(c) The amount of the civil penalty provided for by this section shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.

(d) The chief engineer or the chief engineer's duly authorized agent, upon a finding that a person has committed a violation specified in subsection (b), may order the modification or suspension of the person's water right or use of water, in addition to any other penalty provided by law.

(e) No civil penalty or suspension or modification of a water right or use of water shall be imposed pursuant to this section except on the written order of the chief engineer or duly authorized agent of the chief engineer. Such order shall state the nature of the violation, the factual basis for the finding, the penalty to be imposed and the appropriate procedure for appeal of the order to the chief engineer or the secretary, as established by K.S.A. 2009 Supp. 82a-1901, and amendments thereto. Upon review, the order shall be affirmed, reversed or modified and the reasons therefor shall be specified.

(f) Any person aggrieved by an order of the chief engineer, or the chief engineer's duly authorized agent, pursuant to this section may request review by the secretary as provided by K.S.A. 2009 Supp. 82a-1901, and amendments thereto, and, upon exhaustion of administrative remedies, may appeal to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(g) The provisions of this section shall be part of and supplemental to the Kansas water appropriation act.

Sec. 214. K.S.A. 2009 Supp. 82a-1038 is hereby amended to read as follows: 82a-1038. (a) In any case where the chief engineer finds that any one or more of the circumstances set forth in K.S.A. 82a-1036 and amendments thereto exist and that the public interest requires that any one or more corrective controls be adopted, the chief engineer shall designate, by order, the area in question, or any part thereof, as an intensive groundwater use control area.

(b) The order of the chief engineer shall define specifically the boundaries of the intensive groundwater use control area and shall indicate the circumstances upon which the findings of the chief engineer are made. The order of the chief engineer may include any one or more of the following corrective control provisions: (1) A provision closing the intensive groundwater use control area to any further appropriation of groundwater in which event the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area; (2) a provision determining the permissible total withdrawal of groundwater in the intensive groundwater use control area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights; (3) a provision reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the intensive groundwater use control area; (4) a provision requiring and specifying a system of rotation of groundwater use in the intensive groundwater use control area; (5) any one or more other provisions making such additional requirements as are necessary to protect the public interest. The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for an intensive groundwater use control area to groundwater management district number 4 or to any city, if such district or city is located within or partially within the boundaries of such area.

(c) Except as provided by subsection (d), the order of designation of

an intensive groundwater use control area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 2009 Supp. 82a-1901, and amendments thereto, in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order, and shall file a copy of the same with the register of deeds of any county within which such designated control area lies.

(d) If the holder of a groundwater right within the area designated as an intensive groundwater use control area applies for review of the order of designation pursuant to K.S.A. 2009 Supp. 82a-1901, and amendments thereto, the provisions of the order with respect to the inclusion of the holder's right within the area may be stayed in accordance with the Kansas administrative procedure act.

Sec. 215. K.S.A. 82a-1211 is hereby amended to read as follows: 82a-1211. Appeals from decisions of the secretary may be taken in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 216. K.S.A. 82a-1214 is hereby amended to read as follows: 82a-1214. Any person who shall willfully violate any lawful rule or regulation of the secretary relating to water well contracting, or who shall engage in the business of constructing, reconstructing or treating water wells without first having obtained a license as in this act required, or who shall knowingly violate any provisions of this act, shall be guilty of a class B misdemeanor and subject to the penalties therefor as provided by law. In addition the secretary of health and environment is hereby authorized to apply to the district court for enforcement of this act or rules and regulations adopted under this act in accordance with the provisions of the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

Sec. 217. K.S.A. 2009 Supp. 82a-1216 is hereby amended to read as follows: 82a-1216. (a) Any person who violates any provision of the Kansas groundwater exploration and protection act, any rules and regulations adopted thereunder or any order issued by the secretary thereunder shall incur in addition to other penalties provided by law, a civil penalty not to exceed \$5,000 for each violation. In the case of a continuing violation every day such violation continues shall be deemed a separate violation.

(b) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of the Kansas groundwater exploration and protection act, or any order issued or rule and regulation adopted thereunder, may: (1) Issue a written order requiring that necessary remedial or preventive action be taken within a reasonable time period; (2) assess a civil penalty for each violation within the limits provided in this section which shall constitute an actual and substantial economic deterrent to the violation for which assessed; or (3) both issue such order and assess such penalty. The order shall specify the provisions of the act or rules and regulations alleged to be violated and the facts constituting each violation. Such order shall include the right to a hearing. Any such order shall become final unless, within 15 days after service of the order, the person named therein shall request in writing a hearing by the secretary. If a hearing is requested, the secretary shall notify the alleged violator or violators of the date, place and time of the hearing.

(c) No civil penalty shall be imposed under this section except after notification by issuance and service of the written order and hearing, if a hearing is requested, in accordance with the provisions of the Kansas administrative procedure act.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act for judicial review and civil enforcement of agency actions*.

(e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor.

Sec. 218. K.S.A. 82a-1217 is hereby amended to read as follows: 82a-1217. (a) Notwithstanding the existence or pursuit of any other remedy, the secretary may maintain, in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~, an action in the name of the state of Kansas for injunction or other process against any person to restrain or prevent any violation of the provisions of the Kansas groundwater exploration and protection act or of any rules and regulations adopted thereunder.

(b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall be sufficient to show that a violation of the provisions of this act or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

Sec. 219. K.S.A. 82a-1410 is hereby amended to read as follows: 82a-1410. Any aggrieved party may appeal to the district court as provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

Sec. 220. K.S.A. 82a-1505 is hereby amended to read as follows: 82a-1505. (a) Any action of the panel is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(b) The review proceedings shall have precedence in the district court. Appellate proceedings shall have precedence in the court of appeals and in the state supreme court under such terms and conditions as the supreme court may fix by rule.

Sec. 221. K.S.A. 2009 Supp. 82a-1901 is hereby amended to read as follows: 82a-1901. (a) Orders of the chief engineer of the division of water resources of the department of agriculture pursuant to K.S.A. 42-703, 42-722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038, and amendments thereto, and failure of the chief engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be subject to review in accordance with the provisions of the Kansas administrative procedure act.

Such review shall be conducted by the secretary of agriculture or a presiding officer from the office of administrative hearings within the department of administration. The secretary of agriculture shall not have the authority otherwise to designate a presiding officer to conduct such review unless at the party's request pursuant to K.S.A. 75-37,121, and amendments thereto.

(b) The order of the secretary of agriculture or the administrative law judge or presiding officer upon review pursuant to subsection (a) shall be a final order under the Kansas administrative procedure act. Such order shall not be subject to reconsideration pursuant to K.S.A. 77-529 and amendments thereto and shall be subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(c) This act shall not affect any administrative proceeding pending before the chief engineer of the division of water resources of the department of agriculture, the secretary of agriculture or any administrative hearing officer on July 1, 1999, and such matter shall proceed as though no change in the law had been made with regard to such proceeding.

Sec. 222. K.S.A. 2009 Supp. 82a-2005 is hereby amended to read as follows: 82a-2005. (a) Prior to December 1, 2001, the secretary shall publish as guidance designated use attainability analysis protocols for the revision and adoption of designated uses of classified stream segments to protect the public health or welfare and to enhance the quality of classified stream segments. The secretary shall take into consideration the uses and values of such waters for public water supplies, propagation of

fish and wildlife, navigation and recreational, agricultural, industrial and other purposes.

(b) The designated use attainability analysis protocols shall include, if applicable for the respective designated use, procedures for:

(1) Review of physical, chemical, biological and economic and social factors affecting attainment of a use or uses;

(2) review of naturally-occurring pollutant concentrations and conditions affecting attainment of a use or uses;

(3) review of natural, ephemeral, intermittent or low flow conditions or water levels affecting attainment of a use or uses;

(4) review of human conditions that prevent attainment of a use or uses, including state laws, and that cannot be remedied or that would cause more damage or an inproportionate cost to remedy than to leave in place;

(5) review of hydrologic modifications such as dams and diversions affecting attainment of a use or uses;

(6) review of physical conditions related to natural features such as lack of proper substrate, cover, flow, depth, pools, riffles and other stream morphology affecting attainment of a use or uses;

(7) identification and description of cost-effective and reasonable best management practices for non-point source pollutant control where such control would be needed to attain a use or uses; and

(8) qualified persons outside the department to conduct designated use attainability analyses.

(c) A use or uses shall not be designated unless it is demonstrated that such use or uses are actually existing and attainable, or unless it is demonstrated that the adverse social and economic impacts of designating a use or uses that are not actually existing are outweighed by the social and economic benefits resulting from the attainment of such use or uses.

(d) Within 60 days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(e) Within 60 days after receipt of submission of a complete use attainability analysis, the department shall review and provide a written determination of whether revision of the designated use will be proposed as a rule and regulation. Any person aggrieved by such determination may make written request, within 30 days after receipt of such determination, for a meeting with the secretary or the secretary's designee to discuss the determination and exchange information.

(f) All proposed revisions to the surface water register shall be proposed for adoption in accordance with the rules and regulations filing act (K.S.A. 77-415, and amendments thereto).

(g) Following the promulgation of a revision of the surface water register as a rule and regulation pursuant to subsections (d) and (e), any person aggrieved by such promulgation, within 15 days after publication of the rule and regulation, may request a hearing by filing an application for an order under the Kansas administrative procedure act. Any action of the secretary in a proceeding pursuant to this subsection is subject to review in accordance with the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(h) The Kansas surface water register shall be updated and published annually.

Sec. 223. K.S.A. 2009 Supp. 83-501 is hereby amended to read as follows: 83-501. (a) In addition to any other penalty provided by law, any person who violates any provision of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty imposed under subsection (b) in the amount, fixed by rules and regulations of the secretary of agriculture, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days

after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil penalty recovered pursuant to the provisions of this section or recovered under the consumer protection act for violations of any provision of K.S.A. 83-219, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

Sec. 224. K.S.A. 2009 Supp. 83-502 is hereby amended to read as follows: 83-502. (a) In addition to any other penalty provided by law, any person who violates any provision of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder, may incur a civil penalty imposed under subsection (b) in the amount, fixed by rules and regulations of the secretary of agriculture, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(e) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the *Kansas judicial review act* ~~for judicial review and civil enforcement of agency actions~~.

(f) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(g) Any civil penalty recovered pursuant to the provisions of this sec-

tion or recovered under the consumer protection act for violations of any provision of K.S.A. 83-219, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

Sec. 225. K.S.A. 2-1011, 2-1206, 2-1222, 2-1232, 2-1423, 2-2215, 2-2452, 2-3312, 2-3317, 8-2410, 9-535, 9-1111, 9-1135, 9-1721, 9-1804, 9-2107, 9-2108, 12-16,106, 16a-6-414, 17-12a609, 17-5225d, 25-4185, 31-142, 39-7,143, 39-7,144, 39-7,145, 39-7,146, 39-7,150, 39-7,151, 39-931, 39-964, 40-205d, 40-251, 40-1621, 41-323, 42-703, 44-5,120, 44-829, 44-928, 44-1011, 44-1044, 44-1208, 46-243, 46-263, 46-292, 47-1216, 47-1507, 47-1708, 48-1608, 48-1613, 49-422a, 49-621, 55-164, 55-1,119, 55-443, 55-606, 55-1410, 58-1307, 58-1405, 58-3058, 58-3314, 58-3959, 58-4120, 58-4211, 65-170d, 65-171s, 65-1,207, 65-1,210, 65-1,211, 65-438, 65-440, 65-504, 65-6a34a, 65-785, 65-788, 65-1121a, 65-1431a, 65-1451, 65-1458, 65-1518, 65-1628, 65-1828, 65-2844, 65-2851a, 65-3312, 65-3412, 65-3417, 65-3419, 65-3424l, 65-3440, 65-3446, 65-3456a, 65-3458, 65-34,106, 65-34,122, 65-34,153, 65-4015, 65-4120, 65-4211, 65-4509, 65-5310, 65-5314, 65-5315, 65-5416, 65-5516, 65-5815, 65-6412, 65-6509, 65-7009, 65-7010, 65-7216, 66-118c, 66-1,164, 68-2213, 72-5430a, 74-719, 74-5337, 74-7028, 74-7030, 74-7315, 74-8813, 74-8815, 75-2748, 75-2929h, 75-3342, 75-4330, 75-4334, 75-5951, 76-12a13, 77-522, 77-536, 77-631, 82a-1211, 82a-1214, 82a-1217, 82a-1410 and 82a-1505 and K.S.A. 2009 Supp. 1-311, 1-312, 2-1008, 2-1201b, 2-2206, 2-2440e, 2-2511, 8-259, 8-1020, 8-2404, 8-2411, 8-2603, 8-2605, 8-2606, 9-1805, 12-5325, 12-5354, 16a-6-108, 17-2221a, 25-4713, 25-4715, 31-134, 31-144, 31-159, 31-606, 32-950, 32-1114, 36-509, 36-515b, 39-925, 39-944, 39-947, 39-948, 39-1412, 44-322a, 44-556, 44-612, 44-709, 44-710b, 47-624, 47-1706, 47-1707, 47-1809, 47-2101, 55-1639, 65-163, 65-163a, 65-171d, 65-1,234, 65-516, 65-6a24, 65-6a56, 65-1469, 65-2005, 65-2305, 65-2422d, 65-2912, 65-3008a, 65-3490, 65-34,113, 65-7313, 68-2240, 72-974, 74-596, 74-598, 74-2426, 74-32,173, 74-5369, 74-5616, 74-5617, 75-7c07, 75-2714, 75-2724, 75-2973, 75-3307b, 75-6207, 76-11a11, 79-4707, 82a-302, 82a-724, 82a-737, 82a-1038, 82a-1216, 82a-1901, 82a-2005, 83-501 and 83-502 are hereby repealed.

Sec. 226. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the
SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.