

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2466

By Committee on Judiciary

1-21

1 AN ACT concerning ~~administrative rules and regulations; relating to~~  
2 ~~service of order or notice procedure; relating to the Kansas~~  
3 **administrative procedure act; Kansas judicial review act**; amending  
4 K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and K.S.A. 2013  
5 Supp. 77-519, 77-521 and 77-531 and repealing the existing sections.  
6

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

8 Section 1. K.S.A. 77-502 is hereby amended to read as follows: 77-  
9 502. As used in this act:

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

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

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

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

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

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

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

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

32 (g) "Political subdivision" means political or taxing subdivisions of  
33 the state, including boards, commissions, authorities, councils,  
34 committees, subcommittees and other subordinate groups or administrative  
35 units thereof, receiving or expending and supported in whole or in part by  
36 public funds.

1       (h) "Writing," "written" or "in writing" means any worded or  
2       numbered expression that can be read, reproduced and later  
3       communicated, and includes electronically transmitted and stored  
4       information.

5       Sec. 2. K.S.A. 2013 Supp. 77-519 is hereby amended to read as  
6       follows: 77-519. (a) The presiding officer, at appropriate stages of the  
7       proceedings, shall give all parties full opportunity to file pleadings,  
8       objections and motions, including, but not limited to, motions to dismiss  
9       and motions for summary judgment.

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

13       (c) A party shall serve copies of any filed item on all parties, by mail  
14       or any other means, *including electronic means*, **if the party to be served**  
15       **has consented to service by electronic means**, prescribed by state agency  
16       rule and regulation or by the presiding officer.

17       Sec. 3. K.S.A. 2013 Supp. 77-521 is hereby amended to read as  
18       follows: 77-521. (a) The presiding officer shall grant a petition for  
19       intervention if:

20       (1) The petition is submitted in writing to the presiding officer, with  
21       copies ~~mailed to~~ *served upon* all parties named in the presiding officer's  
22       notice of the hearing, at least three business days before the hearing;

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

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

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

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

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

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

43       (3) requiring two or more interveners to combine their presentations

1 of evidence and argument, cross-examination, discovery and other  
2 participation in the proceedings.

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

10 Sec. 4. K.S.A. 2013 Supp. 77-531 is hereby amended to read as  
11 follows: 77-531. (a) Service of an order or notice shall be made upon the  
12 party and the party's attorney of record, if any, by:

13 (1) Delivering a copy of the order or notice to the person to be served  
14 ~~or by;~~

15 (2) mailing a copy of the order or notice to the person at the person's  
16 last known address; *or*

17 (3) *sending a copy of the order or notice to the person by electronic*  
18 *means, if such person has consented to service by electronic means.*

19 (b) Service shall be presumed if the presiding officer, or a person  
20 directed to make service by the presiding officer, makes a written  
21 certificate of service. Delivery of a copy of an order or notice means  
22 handing the order or notice to the person or leaving the order or notice at  
23 the person's principal place of business or residence with a person of  
24 suitable age and discretion who works or resides therein. Service by mail  
25 is complete upon mailing. *Service by electronic means is complete upon*  
26 *transmission or as otherwise specified in the consent. Any consent to*  
27 *electronic service shall specify when such service is complete.* Whenever a  
28 party has the right or is required to do some act or take some proceedings  
29 within a prescribed period after service of a notice or order and the notice  
30 or order is served by mail *or electronic means*, three days shall be added to  
31 the prescribed period.

32 Sec. 5. K.S.A. 77-545 is hereby amended to read as follows: 77-545.

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

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

41 (2) After the commission has determined and announced that a  
42 hearing should be held, prior to the issuance of a final order, copies of any  
43 written communications from any party regarding the proceeding that are

1 directed to the presiding officer shall be ~~mailed to~~ *served upon* all parties  
2 of record and proof of service shall be furnished to the commission.  
3 Communications requested by members of the commission staff from any  
4 party and any written communications received by members of the  
5 commission staff from any party shall be made a part of the file and the  
6 docket and shall be made available to all persons who desire to use them,  
7 provided that all commission requests for information from a party shall be  
8 ~~mailed to~~ *served upon* all parties of record.

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

13 (c) For purposes of this section, no member of the technical staff shall  
14 be considered a party to any proceeding before the commission, regardless  
15 of participation in staff investigations with respect to the proceeding or of  
16 participation in the proceeding as a witness. Since the purpose of the staff  
17 is to aid the commission in the proper discharge of commission duties, the  
18 presiding officers shall be free at all times to confer with any staff member  
19 with respect to any proceeding. However, no facts that are outside the  
20 record, and that reasonably could be expected to influence the decision in  
21 any matter pending before the commission, shall be furnished to any  
22 presiding officer unless all parties to the proceeding are likewise informed  
23 and afforded a reasonable opportunity to respond. Subsection (b) shall  
24 apply to staff counsel in regard to any adjudicatory proceeding before the  
25 commission.

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

32 Sec. 6. K.S.A. 77-546 is hereby amended to read as follows: 77-546.

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

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

1 (2) After the commissioner has determined and announced that a  
2 hearing should be held, prior to the issuance of a final order, copies of any  
3 written communications from any party regarding the proceeding that are  
4 directed to the presiding officer shall be ~~mailed to~~ *served upon* all parties  
5 of record and proof of service shall be furnished to the commissioner.  
6 Communications requested by the commissioner's staff from any party and  
7 any written communication received by the commissioner's staff from any  
8 party shall be made a part of the file and the docket and shall be made  
9 available to all persons who desire to use them, provided that the  
10 commissioner's requests for information from a party shall be mailed to all  
11 parties of record.

12 (3) The person or persons to whom any *ex parte* communication has  
13 been made shall promptly and fully inform the commissioner of the  
14 substance of the communication, and the circumstances thereof, to enable  
15 the commissioner to take appropriate action.

16 (c) For purposes of this section, no member of the commissioner's  
17 technical staff shall be considered a party to any proceeding before the  
18 commissioner, regardless of participation in staff investigations with  
19 respect to the proceeding or of participation in the proceeding as a witness.  
20 Since the purpose of the staff is to aid the commissioner in the proper  
21 discharge of the commissioner's duties, the presiding officer shall be free  
22 at all times to confer with any staff member with respect to any  
23 proceeding. However, no facts that are outside the record, and that  
24 reasonably could be expected to influence the decision in any matter  
25 pending before the commissioner, shall be furnished to any presiding  
26 officer unless all parties to the proceeding are likewise informed and  
27 afforded a reasonable opportunity to respond. Subsection (b) shall apply to  
28 staff counsel who have participated in the proceeding in regard to any  
29 adjudicatory proceeding before the commissioner.

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

36 Sec. 7. K.S.A. 77-548 is hereby amended to read as follows: 77-548.

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

41 (b) (1) After the director has determined and announced that a  
42 hearing should be held, and prior to the issuance of a final order, no parties  
43 to the proceeding, or their counsel, shall discuss the merits of the matter or

1 proceeding with the presiding officer unless reasonable notice is given to  
2 all parties who have appeared to enable the parties to be present at the  
3 conference.

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

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

19 (c) For purposes of this section, no member of the director's technical  
20 staff shall be considered a party to any proceeding before the director,  
21 regardless of participation in staff investigations with respect to the  
22 proceeding or of participation in the proceeding as a witness. Since the  
23 purpose of the staff is to aid the director in the proper discharge of the  
24 director's duties, the presiding officer shall be free at all times to confer  
25 with any staff member with respect to any proceeding. However, no facts  
26 that are outside the record, and that reasonably could be expected to  
27 influence the decision in any matter pending before the director, shall be  
28 furnished to any presiding officer unless all parties to the proceeding are  
29 likewise informed and afforded a reasonable opportunity to respond.  
30 Subsection (b) shall apply to staff counsel who have participated in the  
31 proceeding in regard to any adjudicatory proceeding before the director.

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

38 Sec. 8. K.S.A. 77-613 is hereby amended to read as follows: 77-613.  
39 Subject to other requirements of this act or of another statute:

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

42 (b) If reconsideration has not been requested and is not a prerequisite  
43 for seeking judicial review, a petition for judicial review of a final order

1 shall be filed within 30 days after service of the order.

2 (c) Except as provided in K.S.A. 77-631, *and amendments thereto*, if  
3 reconsideration has been requested or is a prerequisite for seeking judicial  
4 review, a petition for judicial review of a final order shall be filed: (1)  
5 Within 30 days after service of the order rendered upon reconsideration,  
6 unless a further petition for reconsideration is required under K.S.A. 66-  
7 118b, and amendments thereto; (2) within 30 days after service of an order  
8 denying the request for reconsideration; or (3) in proceedings before the  
9 Kansas corporation commission, within 30 days of the date the request for  
10 reconsideration is deemed to have been denied.

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

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

16 (2) during any period that the petitioner did not know and was under  
17 no duty to discover, or did not know and was under a duty to discover but  
18 could not reasonably have discovered, that the agency had taken the action  
19 or that the agency action had a sufficient effect to confer standing upon the  
20 petitioner to obtain judicial review under this act.

21 (e) Service of an order, pleading or other matter shall be made upon  
22 the parties to the agency proceeding and their attorneys of record, if any,  
23 by:

24 (1) Delivering a copy of it to them ~~or by~~;

25 (2) mailing a copy of it to them at their last known addresses; *or*

26 (3) *sending a copy of it to them by electronic means when authorized*  
27 *by supreme court rule or a local rule.*

28 Delivery of a copy of an order, pleading or other matter means handing  
29 it to the person being served or leaving it at that person's principal place of  
30 business or residence with a person of suitable age and discretion who  
31 works or resides therein. Service shall be presumed if the presiding officer,  
32 or a person directed to make service by the presiding officer, makes a  
33 written certificate of service. Service by mail is complete upon mailing.  
34 Whenever a party has the right or is required to do some act or take some  
35 proceedings within a prescribed period after service of an order, pleading  
36 or other matter and it is served by mail *or electronic means*, three days  
37 shall be added to the prescribed period. Unless reconsideration is a  
38 prerequisite for seeking judicial review, a final order shall state the agency  
39 officer to receive service of a petition for judicial review on behalf of the  
40 agency.

41 Sec. 9. K.S.A. 77-502, 77-545, 77-546, 77-548 and 77-613 and  
42 K.S.A. 2013 Supp. 77-519, 77-521 and 77-531 are hereby repealed.

43 Sec. 10. This act shall take effect and be in force from and after its

- 1 publication in the statute book.