

2016 Kansas Statutes

75-4317. Open meetings declared policy of state; citation of act. (a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

(c) K.S.A. 75-4317 through 75-4320a shall be known and may be cited as the open meetings act.

History: L. 1972, ch. 319, § 1; L. 1975, ch. 455, § 1; L. 1999, ch. 96, § 1; July 1.

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75-4317a. Meeting defined. As used in the open meetings act, "meeting" means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency.

History: L. 1977, ch. 301, § 1; L. 1994, ch. 64, § 1; L. 2008, ch. 178, § 1; L. 2015, ch. 68, § 14; July 1.

75-4318. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices. (a) Subject to the provisions of subsection (g), all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such public bodies or agencies shall be by secret ballot. Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body or agency designated in subsection (a) shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body or agency may require that a request to receive notice must be submitted again to the public body or agency prior to the commencement of any subsequent fiscal year of the public body or agency during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body or agency must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by subsection (b).

(d) Prior to any meeting mentioned by subsection (a), any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

(f) Except as provided by section 22 of article 2 of the constitution of the state of Kansas, interactive communications in a series shall be open if they collectively involve a majority of the membership of the public body or agency, share a common topic of discussion concerning the business or affairs of the public body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the public body or agency.

(g) The provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) to the prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution;

(3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and

(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

History: L. 1972, ch. 319, § 2; L. 1975, ch. 455, § 2; L. 1977, ch. 301, § 2; L. 1978, ch. 361, § 1; L. 1985, ch. 284, § 1; L. 2001, ch. 122, § 1; L. 2002, ch. 162, § 1; L. 2008, ch. 178, § 2; L. 2009, ch. 58, § 1; L. 2012, ch. 16, § 32; L. 2015, ch. 68, § 15; July 1.

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure.

(a) Upon formal motion made, seconded and carried, all public bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of: (1) The justification for closing the meeting; (2) the subjects to be discussed during the closed or executive meeting; and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship;
- (3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the public body or agency;
- (4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) preliminary discussions relating to the acquisition of real property;
- (7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;
- (8) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 38-2212(d)(1), and amendments thereto, or K.S.A. 38-2213(e), and amendments thereto;
- (9) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 22a-243(j), and amendments thereto;
- (10) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 44-596(e), and amendments thereto;
- (11) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 39-7,119(g), and amendments thereto;
- (12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;
- (13) matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the public body or agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;
- (14) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 65-525(f), and amendments thereto;
- (15) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 75-7427, and amendments thereto; and
- (16) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 46-3801, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) (1) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b) (13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(2) (A) Except as otherwise provided by law, any confidential documents, records or reports relating to the prisoner review board provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

(B) Notwithstanding any other provision of law to the contrary, any summary statement provided or received under the provisions of subsection (b)(16) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

History: L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; L. 1981, ch. 344, § 1; L. 1988, ch. 315, § 4; L. 1992, ch. 318, § 9; L. 1993, ch. 286, § 75; L. 1994, ch. 254, § 3; L. 1996, ch. 256, § 23; L. 1999, ch. 96, § 2; L. 2001, ch. 190, § 2; L. 2004, ch. 177, § 2; L. 2005, ch. 126, § 4; L. 2007, ch. 177, § 16; L. 2009, ch. 132, § 14; L. 2012, ch. 16, § 33; L. 2015, ch. 68, § 16; July 1.

Revisor's Note:

Section was amended twice in the 2004 session, see also 75-4319b.

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75-4320. Penalties. (a) Any member of a public body or agency subject to the open meetings act who knowingly violates any of the provisions of such act or who intentionally fails to furnish information as required by K.S.A. 75-4318(b), and amendments thereto, shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed \$500 for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of the open meetings act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of the open meetings act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the attorney general's open government fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(c) No fine shall be imposed pursuant to subsection (a) for violations of K.S.A. 75-4318(f), and amendments thereto, which occur prior to July 1, 2009.

History: L. 1972, ch. 319, § 4; L. 1977, ch. 301, § 4; L. 2004, ch. 177, § 3; L. 2008, ch. 178, § 3; L. 2015, ch. 68, § 17; July 1.

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75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases. (a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus, declaratory judgment or other appropriate order, on application of any person. The district court may require a defendant to complete training approved by the attorney general concerning the requirements of the open meetings act.

(b) In any action hereunder or under K.S.A. 2016 Supp. 75-4320d, and amendments thereto, the burden of proof shall be on the public body or agency to sustain its action.

(c) In any action hereunder, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public body or agency responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the action frivolously, not in good faith or without a reasonable basis in fact or law.

(e) In any action hereunder brought by the attorney general or a county or district attorney, if the court finds that any provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, were violated, such court:

(1) Except as provided in subsection (e)(2), may award the attorney general's or the county or district attorney's reasonable expenses, investigation costs and attorney fees; and

(2) shall award the same if the court determines that the violation was not made in good faith and without a reasonable basis in fact or law.

(f) Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.

(g) As used in this section, "meeting" has the meaning provided by K.S.A. 75-4317a, and amendments thereto.

History: L. 1981, ch. 344, § 2; L. 2015, ch. 68, § 18; July 1.

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75-4320b. Investigation of alleged violations; powers. (a) In investigating alleged violations of the open meetings act, the attorney general or county or district attorney may:

- (1) Subpoena witnesses, evidence, records, documents or other material;
 - (2) take testimony under oath;
 - (3) examine or cause to be examined any records or other documentary material of whatever nature relevant to such alleged violations;
 - (4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material;
 - (5) serve interrogatories; and
 - (6) administer oaths and affirmations.
- (b) Service by the attorney general or a county or district attorney of any interrogatories or subpoena upon any person shall be made:
- (1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or
 - (2) in the manner provided in the code of civil procedure as if a petition had been filed.
- (c) If any person willfully fails or refuses to file any response to a request for information, records or other materials required by this section, respond to interrogatories or obey any subpoena issued by the attorney general or a county or district attorney, the attorney general or a county or district attorney may, after notice, apply to the district court of the county where the request, interrogatories or subpoena was issued, or of any other county where venue is proper, and after a hearing thereon the district court may:
- (1) Issue an order requiring a response to the request for information, records or other materials, a response to interrogatories or compliance with the subpoena; or
 - (2) grant such other relief as may be required, until the person provides the requested response for information, records or other materials, responds to the interrogatories or obeys the subpoena.

History: L. 2000, ch. 156, § 7; L. 2015, ch. 68, § 19; July 1.

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75-4320c. Sunflower Foundation: Health Care for Kansas; subject to open meetings law. The Sunflower Foundation: Health Care for Kansas, established pursuant to the settlement agreement entered into by the attorney general in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee county, Kansas, case no. 97CV608, shall be and is hereby deemed to be a public body and shall be subject to the open meetings law.

History: L. 2001, ch. 122, § 3; April 26.

75-4320d. Civil remedies to enforce act by attorney general; consent order; finding of violation. (a) The attorney general may determine by a preponderance of the evidence after an investigation that a public body or agency has violated K.S.A. 75-4317 et seq., and amendments thereto, and may, at any time prior to the filing of an action pursuant to K.S.A. 75-4320a, and amendments thereto, either enter into a consent order with the public body or agency or issue a finding of violation to the public body or agency.

(1) If the attorney general enters into a consent order with the public body or agency, the consent order:

(A) May contain admissions of fact and any or all of the following:

(i) Require completion of training approved by the attorney general concerning the requirements of K.S.A. 75-4317 et seq., and amendments thereto;

(ii) Impose a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto, in an amount not to exceed \$250 for each violation; and

(iii) Set forth the public body's or agency's agreement that it will comply with the requirements of the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto; and

(B) Shall bear the signature of the head of the public body or agency, of any officer found to have violated the provisions of K.S.A. 75-4317 et seq., and amendments thereto, and of any other person required by the attorney general.

(2) If the attorney general issues a finding of violation to the public body or agency, the finding may contain findings of fact and conclusions of law and require the public body or agency to do any or all of the following:

(A) Cease and desist from further violation;

(B) Comply with the provisions of K.S.A. 75-4317 et seq., and amendments thereto;

(C) Complete training approved by the attorney general concerning the requirements of K.S.A. 75-4317 et seq., and amendments thereto; and

(D) Pay a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto, in an amount not to exceed \$500 for each violation.

(b) The attorney general may require submission of proof that requirements of any consent order entered pursuant to subsection (a)(1) or any finding of violation issued pursuant to subsection (a)(2) have been satisfied.

(c) (1) The attorney general may apply to the district court to enforce a consent order pursuant to subsection (a)(1) or finding of violation pursuant to subsection (a)(2). Prior to applying to the district court, the attorney general shall make a demand to the public body or agency to comply with the consent order or finding of violation and afford reasonable opportunity for the public body or agency to cure the violation.

(2) An enforcement action under this section may be filed in the district court of the county where the consent order or finding of violation is issued or is effective. The district court of any county shall have jurisdiction to enforce any consent order or finding of violation.

(3) If the district court finds the attorney general did not abuse the attorney general's discretion in entering into the consent order or issuing the finding of violation, the district court shall enter an order that:

(A) Enjoins the public body or agency to comply with the consent order or finding of violation;

(B) Imposes a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto. The penalty shall be set by the court in an amount not less than the amount ordered by the attorney general, nor more than \$500 for each violation;

(C) Requires the public body or agency to pay the attorney general's court costs and costs incurred in investigating the violation; and

(D) Provides for any other remedy authorized by K.S.A. 75-4320a(a), and amendments thereto, that the court deems appropriate.

(4) In any enforcement action under this section, if the court finds that any of the provisions of K.S.A. 75-4317 et seq., and amendments thereto, were violated, such court:

(A) Except as provided in subsection (c)(4)(B), may require the public body or agency to pay the attorney general's reasonable attorney fees; and

(B) Shall require the public body or agency to pay the attorney general's reasonable attorney fees, if the public body's or agency's violation was not made in good faith and without a reasonable basis in fact or law.

(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public body or agency:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) In the manner provided in the code of civil procedure as if a petition had been filed.

(e) The attorney general shall maintain and make available for public inspection all consent orders entered pursuant to subsection (a)(1) and all findings of violation issued pursuant to subsection (a)(2).

(f) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 4; July 1.

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75-4320e. Complaint form prescribed by attorney general. (a) Any complaint submitted to the attorney general shall be on a form prescribed by the attorney general setting forth the facts that the complaining party believes show that K.S.A. 75-4317 et seq., and amendments thereto, have been violated. The person submitting the complaint must attest to the facts under penalty of perjury pursuant to K.S.A. 53-601, and amendments thereto.

(b) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 6; July 1.

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75-4320f. Civil remedies to enforce act; consent order. (a) In lieu of bringing an action as provided in K.S.A. 75-4320a, and amendments thereto, the attorney general or a county or district attorney may resolve the matter by accepting a consent judgment with respect to any act or practice declared to be a violation of this act. Before any consent judgment entered into pursuant to this section shall be effective, such judgment must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of the consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(b) A consent judgment may contain any remedy available to the district court, except it shall not include an award of reasonable expenses, investigation costs or attorney fees.

(c) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 5; July 1.