



# *Kansas Human Rights Commission*



*Kansas Act Against Discrimination  
(KAAD)*



*Kansas Age Discrimination in Employment Act  
(KADEA)*



*Racial and Other Profiling Law*



*Updated Effective July 1, 2009*

## Kansas Human Rights Commission

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Table of Contents		
Statute No.	Topic	Page
	<b>KANSAS HUMAN RIGHTS COMMISSION CONTACT INFORMATION</b>	<b>4</b>
	<b>STATUTORY HISTORY</b>	<b>5</b>
	<b>KANSAS ACT AGAINST DISCRIMINATION</b>	<b>8</b>
44-1001	Title of act; declaration of state policy and purpose	8
44-1002	Definitions	8
44-1002a	Repealed	9
44-1003	Human rights commission; membership; organization compensation and expenses staff	9
44-1003a	Repealed	11
44-1004	Powers and duties of commission	11
44-1005	Complaints; investigation; proceedings; remedial orders; dismissal of certain complaints, when, procedure and effect	12
44-1006	Construction of act	14
44-1007	Invalidity of part	14
44-1008	Repealed	14
44-1009	Unlawful employment practices; unlawful discriminatory practices	14
44-1010	Petition for reconsideration of orders of commission	16
44-1011	Enforcement of commission orders; judicial review; procedure	16
44-1012	Posting of law and information	17
44-1013	Unlawful acts; penalties	17
44-1014	Repealed	17
	<b>SUPPLEMENTAL ACTS</b>	<b>18</b>
44-1015	Discrimination in housing; definitions	18
44-1015a	Repealed	18
44-1016	Same; unlawful acts in connection with sale or rental of real property	18
44-1017	Same; unlawful acts as to real estate loans	20

<b>Table of Contents</b>		
<b>Statute No.</b>	<b>Topic</b>	<b>Page</b>
44-1017a	Same; homeowners association; removal of certain restrictive covenants; penalties	20
44-1018	Same; application of act	20
44-1019	Same; complaints; referral to local authority, when; investigation; administrative proceedings; election to file action in court; administrative remedial orders	21
44-1020	Same; subpoenas; witness fees and mileage; interim judicial relief; criminal enforcement of subpoenas	24
44-1021	Same; judicial review of commission action; civil enforcement of act	24
44-1022	Same; civil action by attorney general, when	25
44-1023	Same; assignment of case; expedition	25
44-1024	Same; effect of city ordinances governing housing practices	26
44-1025	Same; cooperation of commission with local agencies; agreements	26
44-1026	Same; unlawful acts; enforcement of section	26
44-1027	Same; unlawful acts; penalties	26
44-1028	Same; severability	26
44-1029	Same; act supplemental	27
44-1030	State and local government contracts; mandatory provisions	27
44-1030a	Repealed	27
44-1031	Same; personnel to be used in performing contracts; reports; nonapplication to certain contractors	27
44-1032	Responsibility for and review of compliance with act; subpoenas; access to premises; oaths and depositions; failure to obey court order, effect; immunity of witnesses from prosecution; perjury	27
44-1033	Initiation and processing complaints; use of information	28
44-1034	Rules and regulations	28
44-1035	Information on racial identification maintained solely on payroll tapes; retrieval restricted	28
44-1036	Severability	28
44-1037	Liberal construction	28
44-1038	Provisions of 44-1031 to 44-1037 supplemental to act against discrimination	28
44-1039	Unlawful act; perjury	28
44-1040	Repealed	29
44-1041	Unlawful acts; penalty	29
44-1042	Award of compensatory damages; reduction	29
44-1043	Provisions of 44-1039 to 44-1042 supplemental to act against discrimination	29
44-1044	Probable cause determinations under 44-1005 or 44-1019; exempt from judicial review and civil enforcement of agency actions act	29
44-1101 to 44-1109	Repealed	29
	<b>KANSAS AGE DISCRIMINATION IN EMPLOYMENT ACT</b>	<b>30</b>
44-1111	Kansas age discrimination in employment act	30
44-1112	Definitions	30
44-1113	Unlawful employment practices based on age	30
44-1114	Posting of act	32
44-1115	Complaint procedure; hearings; orders; rehearing; court review; dismissal of certain complaints, when, procedure and effect	32
44-1116	Contractors; requirements	32
44-1117	Unlawful acts; penalties	32
44-1118	Construction of act; applicability of act, exclusions	32
44-1119	Severability of provisions	33

<b>Table of Contents</b>		
<b>Statute No.</b>	<b>Topic</b>	<b>Page</b>
44-1120	Applicability, constructions and effective date of 1988 act	33
44-1121	Rules and regulations	33
	<b>RACIAL AND OTHER PROFILING LAW</b>	<b>34</b>
22-4606	Racial and other profiling; definitions	34
22-4607	Same; task force, review of and recommendations on policies and procedures	34
22-4608	Same; unlawful for law enforcement to engage in	35
22-4609	Same; prohibited as sole basis for making stop or arrest	35
22-4610	Same; policies preempting profiling, requirements; annual reports of complaints	35
22-4611	Same; complaints, procedure; civil action	36

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## STATUTORY HISTORY

The Kansas Act Against Discrimination was passed in 1953 making Kansas the twelfth state in the United States to have a law against discrimination. The act was limited to employment practices and had no enforcement provisions. The act was amended in 1961 to become an enforceable law prohibiting discriminatory employment practices because of race, religion, color, national origin or ancestry.

The act was amended in 1963 to prohibit discrimination by hotels, motels, cabin camps and restaurants. In 1965 the legislature broadened the act's coverage of employment practices and places of public accommodations. In 1967 the Commission was given the power to investigate complaints of discrimination and the power of subpoena.

Housing discrimination was prohibited by the act of the 1970 Kansas Legislature, which also increased the size of the Commission to its present seven members and gave it power to conduct investigations without the filing of a formal complaint.

The 1972 Kansas Legislature further amended the act in three ways. The Commission was given authority to investigate complaints of sex discrimination, have a contract compliance program, and to use hearing examiners for public hearings.

In 1974 the Legislature prohibited discrimination in employment and public accommodations because of physical handicap but limited remedies for such discrimination. The law has been changed since that time to include persons with physical and mental disabilities.

In 1975 amendments eliminated some sex biased pronouns, required employment of a full-time hearing examiner, required that complaints be served on the respondent within seven days of filing and made a number of other changes.

The 1977 Legislature amended only the contract compliance sections (K.S.A. 44-1030 and K.S.A. 44-1031), removing most of the burden of paperwork from contractors, contracting agencies and the Commission, and setting a lower limit of \$5,000.00 cumulatively in a fiscal year on contracts to be included in the coverage of the law.

In 1978 the legislature amended K.S.A. 44-1003 to permit the use of a pro tem hearing examiner, and to subject the Commission to possible abolishment under the provisions of the Sunset Law. K.S.A. 44-1035 was amended to allow the State equal employment opportunity office access to racial identification maintained on State payroll tapes.

In 1983 age discrimination in employment (applicable only to those persons within the 40-70 age bracket) was enacted in the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) The Kansas Age Discrimination in Employment Act was again amended in 1988 to include those persons within ages 18 and over. Later, in 2008, the definition of age was changed to 40 or more years.

In 1984 compensation for pain, suffering, and humiliation (with a maximum award of \$2,000.00) was amended to the Act.

In 1986, K.S.A. 44-1011 was amended to place appeals and enforcement of final public hearing orders of the Kansas Commission on Civil Rights under the Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 et seq.). However, K.S.A. 1988 Supp. 77-618(b) indicates that review of disputed issues of fact shall be confined to the agency record for judicial

review, as supplemented by possible additional evidence, and that review of KCCR orders will be in accordance with K.S.A. 44-1011 and K.S.A. 44-1021. In 1985, K.S.A. 44-1044 was added to provide that Commission findings of “no probable cause” were exempt for the act for Judicial Review and Civil Enforcement of Agency Actions.

In 1988 and 1989 the Legislature amended K.S.A. 44-1005, 44-1011, 44-1019, and 44-1115 so that Commission public hearings are conducted in accordance with the Kansas Administrative Procedure Act (K.S.A. 77-501 et seq.). These amendments also established, in K.S.A. 44-1005, that such hearings are governed by the rules of evidence.

In 1989 K.S.A. 44-1121 was added to give the Commission the authority to adopt suitable rules and regulations to carry out the provisions of the Kansas Age Discrimination in Employment Act.

In 1991, the act was amended so as to prohibit discrimination in employment, public accommodations and housing on the basis of disability, and to also prohibit housing discrimination on the basis of familial status. In 1991 the act was further amended to change the name of the Kansas Commission on Civil Rights to the Kansas Human Rights Commission.

In 1992 K.S.A. 44-1003 was amended to remove the Commission from the provisions of the so-called “Sunset Law”, so that the Commission was no longer subject to abolition under that law.

In 1992 several amendments to the housing discrimination provisions of the act were made which expanded the remedies and options available in housing discrimination situations.

In 1995 K.S.A. 44-1003 were amended by two separate legislative bills, resulting in both a section K.S.A. 44-1003 and 44-1003a appearing in the statute book. The changes removed the statutory requirement that the Commission employ at least one full-time hearing examiner, authorized the Commission to employ or contract for the services of hearing examiners or pro tem hearing examiners to preside over public hearings, and amended the provisions of the statute regarding the terms, appointment and confirmation of the Commissioners. The changes also established a requirement that no more than four of the Commissioners may be from the same political party. Also in 1995, K.S.A. 44-1005 and K.S.A. 44-1115 were amended to provide that a complaint may be dismissed under certain circumstances after pending before the Commission for at least 300 days without a finding or disposition by the Commission, with that dismissal constituting exhaustion of the administrative remedies sufficient to allow a complainant to thereafter file the matter in court.

In 1996 K.S.A. 44-1003 was amended to reconcile the inconsistencies between K.S.A. 44-1003 and K.S.A. 44-1003a. The language in K.S.A. 44-1003a providing that no more than four members of the Commission shall be from the same political party, that a Commissioner may not act until confirmed by the Senate, and the Commissioners’ terms end on January 15, was incorporated into K.S.A. 44-1003. K.S.A. 44-1003a was repealed.

Beginning in 1999, the Kansas Act Against Discrimination prohibited discrimination on the basis of genetic screening or testing, which also allowed the KHRC to investigate such complaints.

The 2001 Legislature amended K.S.A. 44-1015 subsection (i)(4) to be in accordance with the provisions of K.S.A. 75-4215, which regulates payments to the state treasurer when a civil penalty is awarded in a case of housing discrimination. This amendment is effective as of July 1, 2001.

K.S.A. 44-1005 was amended effective July 1, 2004 to require that on and after July 1, 2007, the Commission shall utilize hearing officers from the Office of Administrative Hearings within the Department of Administration to conduct its public hearings. The amendment eliminated the Commission’s options of employing a hearing examiner or having its own public hearings presided over by contract pro tem hearing officers. The Commission retains the option under the statute of conducting public hearings presided over by a panel of Commissioners. K.S.A. 44-1005 was further amended to remove references to dismissal of cases filed before July 1, 1996 pending before the

Commission for over 300 days without a determination. No such cases were in existence, and thus the provisions were considered archaic and no longer needed.

Substitute for Senate Bill 77 of the 2005 Legislative Session enacted K.S.A. 22-4606 et seq. effective July 1, 2005, which prohibits law enforcement officers or agencies from relying, as the sole factor, on race, ethnicity, national origin, gender or religious dress in selecting which individuals to subject to routine traffic stops, or in deciding upon the scope and substance of law enforcement activity following the initial routine traffic stop. The law also provides that a representative from the Commission shall serve on a 15-member task force appointed by the governor. The governor's task force on racial profiling shall work in partnership with local and state law enforcement agencies to review current policies and make recommendations for future policies and procedures statewide for the full implementation of the provisions of K.S.A. 2006 Supp. 22-4606 through 22-4611, and amendments thereto. The task force shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling. The law mandates that the Commission shall receive, review, and investigate, if necessary, complaints of racial and other profiling.

House Bill 2582 of the 2006 Legislative Session amended the Kansas Act Against Discrimination to prohibit discrimination in homeowners associations' restrictive covenants based on race, religion, color, sex, disability, familial status, national origin, and ancestry. If the homeowners association fails to delete prohibited language, the Commission may bring action against the homeowners association for injunctive relief. These provisions are detailed in K.S.A. 44-1017a.

House Bill 2771 of the 2008 Legislative Session amended the definition of age in the Kansas Age Discrimination in Employment Act from 18 and over to 40 and over.

## KANSAS ACT AGAINST DISCRIMINATION

**44-1001. Title of act; declaration of state policy and purpose.** This act shall be known as the Kansas act against discrimination. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, safety, health and peace of the people of this state. The practice or policy of discrimination against individuals in employment relations, in relation to free and public accommodations, in housing by reason of race, religion, color, sex, disability, national origin or ancestry or in housing by reason of familial status is a matter of concern to the state, since such discrimination threatens not only the rights and privileges of the inhabitants of the state of Kansas but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the state of Kansas to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation, or separation in all places of public accommodations covered by this act, and to eliminate and prevent discrimination, segregation or separation in housing.

It is also declared to be the policy of this state to assure equal opportunities and encouragement to every citizen regardless of race, religion, color, sex, disability, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which a person is properly qualified, to assure equal opportunities to all persons within this state to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, religion, color, sex, disability, familial status, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this act and the opportunity for full and equal housing are civil rights of every citizen.

To protect these rights, it is hereby declared to be the purpose of this act to establish and to provide a state commission having power to eliminate and prevent segregation and discrimination, or separation in employment, in all places of public accommodations covered by this act, in housing because of race, religion, color, sex, disability, national origin or ancestry and in housing because of familial status, either by employers, labor organizations, employment agencies, realtors, financial institutions or other persons as hereinafter provided.

**History:** L. 1953, ch. 249, § 1; L. 1961, ch. 248, § 1; L. 1963, ch. 279, § 1; L. 1965, ch. 323, § 1; L. 1972, ch. 194, § 1; L. 1974, ch. 209, § 1; L. 1991, ch. 147, § 1; July 1.

**44-1002. Definitions.** When used in this act:

- (a) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.
- (b) "Employer" includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.
- (c) "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
- (d) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.
- (e) "Employment agency" includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.
- (f) "Commission" means the Kansas human rights commission created by this act.
- (g) "Unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009 and amendments thereto and includes segregate or separate.
- (h) "Public accommodations" means any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any

lodging establishment or food service establishment, as defined by K.S.A 36-501 and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

- (i) "Unlawful discriminatory practice" means:
    - (1) Any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin or ancestry:
      - (A) In any place of public accommodations; or
      - (B) in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; and
    - (2) any discrimination against persons in regard to membership in a nonprofit recreational or social association or corporation by reason of race, religion, sex, color, disability, national origin or ancestry if such association or corporation has 100 or more members and:
      - (A) Provides regular meal service; and
      - (B) receives payment for dues, fees, use of space, use of facility, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers. This term shall not apply to a religious or private fraternal and benevolent association or corporation.
  - (j) "Disability" means, with respect to an individual:
    - (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
    - (2) a record of such an impairment; or
    - (3) being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of.
- Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. 802), in housing discrimination. In employment and public accommodation discrimination, "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. 812), when the covered entity acts on the basis of such use.
- (k) "Reasonable accommodation" means:
    - (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
    - (2) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
  - (l) "Regarded as having such an impairment "means the absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists.
  - (m) "Genetic screening or testing" means a laboratory test of a person's genes or chromosomes for abnormalities, defects or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects or deficiencies, and not an indirect manifestation of genetic disorders.

**History:** L. 1953, ch. 249, § 2; L. 1961, ch. 248, § 2; L. 1963, ch. 279, § 2; L. 1965, ch. 323, § 2; L. 1970, ch. 192, § 1; L. 1972, ch. 194, § 2; L. 1974, ch. 209, § 2; L. 1975, ch. 264, § 1; L. 1991, ch. 147, § 2; L. 1992, ch. 91, § 1; L. 1999, ch. 32, § 1; July 1.

**44-1002a. History:** L. 1953, ch. 249, § 2; L. 1961, ch. 248, § 2; L. 1963, ch. 279, § 2; L. 1965, ch. 323, § 2; L. 1970, ch. 192, § 1; L. 1972, ch. 194, § 2; L. 1974, ch. 209, § 2; L. 1975, ch. 264, § 1; L. 1991, ch. 148, § 2; Repealed, L. 1992, ch. 91, § 4; April 23.

**44-1003. Human rights commission; membership; organization compensation and expenses staff.**

- (a) There is hereby created the Kansas human rights commission. The commission shall consist of seven members, two of whom shall be representative of industry, two of whom shall be

representative of labor, one of whom shall be a person authorized to practice law in this state, one of whom shall be a representative of the real estate industry, and one of whom shall be appointed at large, to be known as commissioners. No more than four members of the commission shall be from the same political party. Members of the commission 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 commission shall exercise any power, duty or function as a member of the commission until confirmed by the senate. One member shall be designated by the governor as chairperson and shall preside at all meetings of the commission and perform all the duties and functions of chairperson.

- (b) The commission may designate one member to act as chairperson during the absence or incapacity of the chairperson, and, when so acting, the member designated shall have and perform all the duties and functions of the chairperson of the commission.
- (c) Except as provided by subsection (d), the term of office of each member of the commission shall be four years and until a successor is confirmed. Any member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member's predecessor.
- (d) The terms of members who are serving on the commission on the effective date of this act shall expire on January 15, of the year on 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.
- (e) A majority of the current members of the commission shall constitute a quorum for the purpose of conducting the business of the commission, except as otherwise provided in this section. Vacancies on the commission shall not impair the right of the remaining members to exercise all the powers of the commission.
- (f) Members of the Kansas human rights commission attending meetings of the commission, or attending a subcommittee meeting thereof authorized by the commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.
- (g) The commission shall employ a full-time executive director who shall be in the unclassified service under the Kansas civil service act and who shall receive an annual salary fixed by the commission, with the approval of the governor. The commission shall employ such professional staff and full or part-time legal, stenographic and clerical assistants as necessary to carry out the provisions of this act and shall fix the amount of their compensation. The commission also may employ or may contract for the services of qualified hearing examiners to conduct hearings. In addition, the commission may employ or may contract for the services of qualified hearing examiners pro tem when necessitated by the incapacity or disqualification of the other hearing examiners. All hearing examiners shall be admitted to practice law before the supreme court of Kansas. The appointment and compensation of legal counsel, except those members of the legal staff serving as hearing examiners, shall be approved by the attorney general.
- (h) On July 1, 1991, the commission on civil rights shall become the Kansas human rights commission. The Kansas human rights commission shall be a continuation of the commission on civil rights and members and employees of the commission on civil rights shall continue as members and employees of the Kansas human rights commission. All rules and regulations and orders of the commission on civil rights shall be deemed rules and regulations and orders of the Kansas human rights commission. All properties, moneys, appropriations, rights and authorities vested in the commission on civil rights shall be vested in the Kansas human rights commission. Whenever the commission on civil rights, 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 apply to the Kansas human rights commission.

**History:** L. 1953, ch. 249, § 3; L. 1961, ch. 248, § 3; L. 1965, ch. 323, § 3; L. 1967, ch. 284, § 1; L. 1970, ch. 192, § 8; L. 1972, ch. 194, § 3; L. 1974, ch. 348, § 18; L. 1975, ch. 264, § 2; L. 1978, ch. 198, § 1; L. 1978, ch. 308, § 49; L. 1982, ch. 347, § 20; L. 1991, ch. 148, § 3; L. 1992, ch. 116, § 28; L. 1995, ch. 247, § 1; L. 1996, ch. 250, § 1; July 1.

**44-1003a. History:** L. 1953, ch. 249, § 3; L. 1961, ch. 248, § 3; L. 1965, ch. 323, § 3; L. 1967, ch. 284, § 1; L. 1970, ch. 192, § 8; L. 1972, ch. 194, § 3; L. 1974, ch. 348, § 18; L. 1975, ch. 264, § 2; L. 1978, ch. 198, § 1; L. 1978, ch. 308, § 49; L. 1982, ch. 347, § 20; L. 1991, ch. 148, § 3; L. 1992, ch. 116, § 28; L. 1995, ch. 241, § 6; Repealed, L. 1996, ch. 250, § 2; July 1.

**44-1004. Powers and duties of commission.** The commission shall have the following functions, powers and duties:

- (1) To establish and maintain its principal office in the city of Topeka, and such other offices elsewhere within the state as it may deem necessary.
- (2) To meet and function at any place within the state.
- (3) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this act, and the policies and practices of the commission in connection therewith.
- (4) To receive, initiate, investigate and pass upon complaints alleging discrimination in employment, public accommodations and housing because of race, religion, color, sex, disability, national origin or ancestry and complaints alleging discrimination in housing because of familial status.
- (5) To subpoena witnesses, compel their appearance and require the production for examination of records, documents and other evidence or possible sources of evidence and to examine, record and copy such materials and take and record the testimony or statements of such persons. The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction provided that the commission first complies with the provisions of article 15 of the Kansas bill of rights and the fourth amendment to the United States constitution relating to unreasonable searches and seizures. The commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, or to testify to any matter regarding which such person may be lawfully questioned, the district court of any county may, upon application of the commission, order such person to comply with such subpoena or interrogatory and to testify. Failure to obey the court's order may be punished by the court as contempt. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person testifies or produces evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons.
- (6) To act in concert with other parties in interest in order to eliminate and prevent discrimination and segregation, prohibited by this act, by including any term in a conciliation agreement as could be included in a final order under this act.
- (7) To apply to the district court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement by seeking specific performance of such agreement.
- (8) To issue such final orders after a public hearing as may remedy any existing situation found to violate this act and prevent its recurrence.
- (9) To endeavor to eliminate prejudice among the various ethnic groups and people with disabilities in this state and to further good will among such groups. The commission in cooperation with the state department of education shall prepare a comprehensive educational program designed for the students of the public schools of this state and for all other residents thereof, calculated to emphasize the origin of prejudice against such groups, its harmful effects and its incompatibility with American principles of equality and fair play.
- (10) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this act; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, disability, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the

population of this state; and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the state.

- (11) To accept contributions from any person to assist in the effectuation of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section.
- (12) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, disability, national origin or ancestry.
- (13) To render each year to the governor and to the state legislature a full written report of all of its activities and of its recommendations.
- (14) To adopt an official seal.
- (15) To receive and accept federal funds to effectuate the purposes of the act and to enter into agreements with any federal agency for such purpose.

**History:** L. 1953, ch. 249, § 4; L. 1961, ch. 248, § 4; L. 1963, ch. 279, § 3; L. 1965, ch. 323, § 4; L. 1967, ch. 285, § 1; L. 1970, ch. 192, § 2; L. 1972, ch. 194, § 4; L. 1974, ch. 209, § 3; L. 1975, ch. 264, § 3; L. 1991, ch. 147, § 3; July 1.

**44-1005. Complaints; investigation; proceedings; remedial orders; dismissal of certain complaints, when, procedure and effect**

- (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice, and who can articulate a prima facie case pursuant to a recognized legal theory of discrimination, may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing, articulating the prima facie case, which shall also state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.
- (b) The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. Whenever the attorney general has sufficient reason to believe that any person as herein defined is engaged in a practice of discrimination, segregation or separation in violation of this act, the attorney general may make, sign and file a complaint. Any employer whose employees or some of whom, refuse or threaten to refuse to cooperate with the provisions of this act, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.
- (c) Whenever any problem of discrimination because of race, religion, color, sex, disability, national origin or ancestry arises, or whenever the commission has, in its own judgment, reason to believe that any person has engaged in an unlawful employment practice or an unlawful discriminatory practice in violation of this act, or has engaged in a pattern or practice of discrimination, the commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for the investigation of complaints. The person to be investigated shall be advised of the nature and scope of such investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the commission may issue a complaint whenever the investigation has revealed a violation of the Kansas act against discrimination has occurred. The information gathered in the course of the first investigation may be used in processing the complaint.
- (d) After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall, within seven days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of

the alleged act of discrimination. If the commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, such commissioner, within 10 business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination.

- (e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The complainant, respondent and commission shall have 45 days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement signed by all parties in interest. The parties may amend a conciliation agreement at any time prior to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.
- (f) In case of failure to eliminate such practices by conference and conciliation, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, the commissioner or the commission shall commence a hearing in accordance with the provisions of the Kansas administrative procedure act naming as parties the complainant and the person, employer, labor organization, employment agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent. A copy of the complaint shall be served on the respondent. At least four commissioners or a presiding officer from the office of administrative hearings shall be designated as the presiding officer. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.
- (g) The complainant or respondent may apply to the presiding officer for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the presiding officer shall issue such subpoena.
- (h) The case in support of the complaint shall be presented before the presiding officer by one of the commission's attorneys or agents, or by private counsel, if any, of the complainant, and the commissioner who shall have previously made the investigation shall not participate in the hearing except as a witness. Any endeavors at conciliation shall not be received in evidence.
- (i) Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Any such dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto. The provisions of this section shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015 et seq. and amendments thereto.
- (j) The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall appear at such hearing in person, with or without counsel, and submit testimony. The presiding officer or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend such respondent's answer. The presiding officer shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable probative value shall be received.

- (k) If the presiding officer finds a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the presiding officer shall render an order requiring such respondent to cease and desist from such unlawful employment practice or such unlawful discriminatory practice and to take such affirmative action, including but not limited to the hiring, reinstatement, or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organizations; the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this act, as, in the judgment of the presiding officer, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. Such order may also include an award of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of \$2,000.
- (l) Any state, county or municipal agency may pay a complainant back pay if it has entered into a conciliation agreement for such purposes with the commission, and may pay such back pay if it is ordered to do so by the commission.
- (m) If the presiding officer finds that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discriminatory practice, the presiding officer shall render an order dismissing the complaint as to such respondent.
- (n) The commission shall review an initial order rendered under subsection (k) or (m). In addition to the parties, a copy of any final order shall be served on the attorney general and such other public officers as the commission may deem proper.
- (o) The commission shall, except as otherwise provided, establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. The rules of practice shall be available, upon written request, within 30 days after the date of adoption.

**History:** L. 1953, ch. 249, § 5; L. 1961, ch. 248, § 6; L. 1963, ch. 279, § 4; L. 1965, ch. 323, § 5; L. 1967, ch. 285, § 2; L. 1970, ch. 192, § 3; L. 1972, ch. 194, § 5; L. 1974, ch. 209, § 4; L. 1975, ch. 264, § 4; L. 1984, ch. 186, § 1; L. 1988, ch. 356 § 149; L. 1989, ch. 283, § 9; L. 1991, ch. 147, § 4; L. 1995, ch. 247, § 2; L. 2004, ch. 145, § 15; July 1, 2007.

**44-1006. Construction of act.**

- (a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this act shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, religion, color, sex, disability, national origin or ancestry, unless the same is specifically repealed by this act.
- (b) Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.

**History:** L. 1953, ch. 249, § 6; L. 1963, ch. 279, § 5; L. 1970, ch. 192, § 4; L. 1972, ch. 194, § 6; L. 1974, ch. 209, § 5; L. 1991, ch. 147, § 5; July 1.

**44-1007. Invalidity of part.** If any clause, sentence, paragraph or part of this act or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this act and the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and the persons or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included.

**History:** L. 1953, ch. 249, § 7; June 30.

**44-1008. History:** L. 1953, ch. 249, § 8; Repealed, L. 1961, ch. 248, § 12; June 30.

**44-1009. Unlawful employment practices; unlawful discriminatory practices.**

- (a) It shall be an unlawful employment practice:
  - (1) For an employer, because of the race, religion, color, sex, disability, national origin or ancestry of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation

- or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (2) For a labor organization, because of the race, religion, color, sex, disability, national origin or ancestry of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.
  - (3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.
  - (4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this act or because such person has filed a complaint, testified or assisted in any proceeding under this act.
  - (5) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of such person's race, religion, color, sex, disability, national origin or ancestry; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry.
  - (6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on-the-job, or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of race, religion, color, sex, disability, national origin or ancestry, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.
  - (7) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.
  - (8) For an employer, labor organization, employment agency or joint labor-management committee to:
    - (A) Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
    - (B) participate in a contractual or other arrangement or relationship, including a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this act;
    - (C) utilize standards criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;
    - (D) exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
    - (E) not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof;

- (F) deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
  - (G) use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job-related for the position in question and is consistent with business necessity; or
  - (H) fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).
- (9) For any employer to:
- (A) Seek to obtain, to obtain or to use genetic screening or testing information of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee; or
  - (B) subject, directly or indirectly, any employee or prospective employee to any genetic screening or test.
- (b) It shall not be an unlawful employment practice to fill vacancies in such way as to eliminate or reduce imbalance with respect to race, religion, color, sex, disability, national origin or ancestry.
- (c) It shall be an unlawful discriminatory practice:
- (1) For any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this act because of race, religion, color, sex, disability, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.
  - (2) For any person, whether or not specifically enjoined from discriminating under any provisions of this act, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.
  - (3) For any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the race, religion, color, sex, disability, national origin or ancestry of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.

**History:** L. 1961, ch. 248, § 5; L. 1965, ch. 323, § 6; L. 1970, ch. 192, § 5; L. 1972, ch. 194, § 7; L. 1974, ch. 209, § 6; L. 1991, ch. 147, § 6; L. 1999, ch. 32, § 2; July 1.

**44-1010. Petition for reconsideration of orders of commission.** Any party being dissatisfied with any order or decision of the commission may petition for reconsideration in accordance with the provisions of K.S.A. 77-529 and amendments thereto. No cause of action arising out of any order or decision of the commission shall accrue in any court to any party unless such party shall petition for reconsideration as herein provided. No party shall, in any court, urge or rely upon any ground not set forth in the petition for reconsideration.

**History:** L. 1961, ch. 248, § 7; L. 1988, ch. 356, § 150; July 1, 1989.

**44-1011. Enforcement of commission orders; judicial review; procedure.**

- (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 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 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.

**History:** L. 1961, ch. 248, § 8; L. 1963, ch. 279, § 6; L. 1965, ch. 323, § 7; L. 1967, ch. 285, § 3; L. 1970, ch. 192, § 6; L. 1979, ch. 161, § 3; L. 1986, ch. 318, § 64; July 1.

**44-1012. Posting of law and information.** Every person, as defined herein, employer, employment agency and labor union subject to this act, shall keep posted in a conspicuous place or places on his premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this act and such other relevant information which the commission shall deem necessary to explain the act.

**History:** L. 1961, ch. 248, § 9; L. 1963, ch. 279, § 7; L. 1965, ch. 323, § 8; June 30.

**44-1013. Unlawful acts; penalties.** Any person, as defined herein, employer, labor organization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this act, or shall willfully violate an order of the commission, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than one (1) year, or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment; but procedure for the review of the order shall not be deemed to be such willful conduct.

**History:** L. 1961, ch. 248, § 10; L. 1965, ch. 323, § 9; L. 1970, ch. 192, § 7; July 1.

**44-1014. History:** L. 1961, ch. 248, § 11; Repealed, L. 1972, ch. 194, § 23; July 1.

## SUPPLEMENTAL ACTS

**44-1015. Discrimination in housing; definitions.** As used in this act, unless the context otherwise requires:

- (a) "Commission" means the Kansas human rights commission.
- (b) "Real property" means and includes:
  - (1) All vacant or unimproved land; and
  - (2) any building or structure which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy.
- (c) "Family" includes a single individual.
- (d) "Person" means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.
- (e) "To rent" means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (f) "Discriminatory housing practice" means any act that is unlawful under K.S.A. 44-1016, 44-1017 or 44-1026, and amendments thereto.
- (g) "Person aggrieved" means any person who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur.
- (h) "Disability" has the meaning provided by K.S.A. 44-1002 and amendments thereto.
- (i) "Familial status" means having one or more individuals less than 18 years of age domiciled with:
  - (1) A parent or another person having legal custody of such individual or individuals; or
  - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

**History:** L. 1970, ch. 193, § 1; L. 1991, ch. 147, § 7; L. 1992, ch. 91, § 2; April 23.

**44-1015a. History:** L. 1970, ch. 193, § 1; L. 1991, ch. 148, § 4; Repealed, L. 1992, ch. 91, § 4; April 23.

**44-1016. Same; unlawful acts in connection with sale or rental of real property.** Subject to the provisions of K.S.A. 44-1018 and amendments thereto, it shall be unlawful for any person:

- (a) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry.
- (b) To discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin or ancestry.
- (c) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status, national origin or ancestry, or an intention to make any such preference, limitation, specification or discrimination.
- (d) To represent to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry that any real property is not available for inspection, sale or rental when such real property is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood of a person or

persons of a particular race, religion, color, sex, disability, familial status, national origin or ancestry.

- (f) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against such person in the terms or conditions of such access, membership or participation, because of race, religion, color, sex, disability, familial status, national origin or ancestry.
- (g) To discriminate against any person in such person's use or occupancy of real property because of the race, religion, color, sex, disability, familial status, national origin or ancestry of the people with whom such person associates.
- (h)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, residential real property to any buyer or renter because of a disability of:
    - (A) That buyer or renter;
    - (B) a person residing in or intending to reside in such real property after it is sold, rented or made available; or
    - (C) any person associated with that buyer or renter.
  - (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of residential real property or in the provision of services or facilities in connection with such real property because of a disability of:
    - (A) That person;
    - (B) a person residing in or intending to reside in that real property after it is so sold, rented or made available; or
    - (C) any person associated with that person.
  - (3) For purposes of this subsection (h), discrimination includes:
    - (A) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;
    - (B) a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy residential real property; or
    - (C) in connection with the design and construction of covered multifamily residential real property for first occupancy on and after January 1, 1992, a failure to design and construct such residential real property in such a manner that:
      - (i) The public use and common use portions of such residential real property are readily accessible to and usable by persons with disabilities;
      - (ii) all the doors designed to allow passage into and within all premises within such residential real property are sufficiently wide to allow passage by persons with disabilities who are in wheelchairs; and
      - (iii) all premises within such residential real property contain the following features of adaptive design: An accessible route into and through the residential real property; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
  - (4) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of subsection (h)(3)(C)(iii).
  - (5) As used in this subsection (h), "covered multifamily residential real property" means:
    - (A) Buildings consisting of four or more units if such buildings have one or more elevators; and
    - (B) ground floor units in other buildings consisting of four or more units.
  - (6) Nothing in this act shall be construed to invalidate or limit any state law or ordinance that requires residential real property to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this act.

- (7) Nothing in this subsection (h) requires that residential real property be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**History:** L. 1970, ch. 193, § 2; L. 1972, ch. 194, § 8; L. 1991, ch. 147, § 8; L. 1992, ch. 142, § 1; July 1.

**44-1017. Same; unlawful acts as to real estate loans.**

- (a) It shall be unlawful for any person or other entity whose business includes engaging in real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of the race, religion, color, sex, disability, familial status, national origin or ancestry of such person or of any person associated with such person in connection with any real estate related transaction.
- (b) As used in this section, "real estate related transaction" means any of the following:
- (1) The making or purchasing of loans or providing other financial assistance:
    - (A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
    - (B) secured by real property.
  - (2) The selling, brokering or appraising of real property.
- (c) Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, religion, color, sex, disability, familial status, national origin or ancestry.

**History:** L. 1970, ch. 193, § 3; L. 1972, ch. 194, § 9; L. 1991, ch. 147, § 9; Jan. 1, 1992.

**44-1017a. Same; homeowners association; removal of certain restrictive covenants; penalties.**

- (a) No declaration or other governing document of an association shall include a restrictive covenant in violation of K.S.A. 44-1016 and 44-1017 and amendments thereto.
- (b) Within 60 days of the effective date of this act, the board of directors of an association shall amend any declaration or other governing document that includes a restrictive covenant in violation of K.S.A. 44-1016 and 44-1017, and amendments thereto, by removing such restrictive covenant. Such amendment shall not require the approval of the members of the association. No other change shall be required to be made to the declaration or other governing document of the association pursuant to this section. Within 10 days of the adoption of the amendment, the amended declaration or other governing document shall be recorded in the same manner as the original declaration or other governing document. No fee shall be charged for such recording.
- (c) If the commission, a city or county in which the association is located provides written notice to an association requesting that the association delete a restrictive covenant in violation of K.S.A. 44-1016 and 44-1017, and amendments thereto, the association shall delete the restrictive covenant within 30 days of receiving the notice. If the association fails to delete the restrictive covenant in violation of K.S.A. 44-1016 and 44-1017, and amendments thereto, the commission, a city or county in which the association is located, or any person adversely affected by such restrictive covenant may bring an action against the homeowners association for injunctive relief to enforce the provisions of subsections (a) and (b) of this section. The court may award attorney's fees to the prevailing party.
- (d) For the purposes of this section:
- (1) "Association" means a non-profit homeowners association as defined in K.S.A. 60-3611 and amendments thereto.
  - (2) "Commission" means the Kansas human rights commission as defined in K.S.A. 44-1002 and amendments thereto.
- (e) This section shall be supplemental to and a part of the Kansas act against discrimination.

**History:** L. 2006, ch. 144, § 1; July 1.

**44-1018. Same; application of act.**

- (a) Nothing in this act shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of real property

which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or ancestry. Nor shall anything in this act prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

- (b) Nothing in this act, other than the prohibitions against discriminatory advertising as provided in subsection (c) of K.S.A. 44-1016 and amendments thereto, shall apply to:
  - (1) The sale or rental of any single family house by an owner, provided the following conditions are met:
    - (A) The owner does not own or have any interest in more than three single family houses at any one time; and
    - (B) the house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this subsection applies to only one such sale in any 24-month period; or
  - (2) rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as the owner's residence.
- (c)
  - (1) Nothing in this act limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this act regarding familial status apply with respect to dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, or to housing for older persons.
  - (2) As used in this subsection (c), "housing for older persons" means housing communities:
    - (A) Intended for, and at least 80% occupied by, at least one person 55 years of age or older per unit and providing significant facilities and services specifically designed to meet the physical or social needs of such persons; or
    - (B) intended for and occupied solely by persons 62 years of age or older.
- (d) Nothing in this act prohibits conduct against a person because such person has been convicted two or more times by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the federal controlled substances act (21 U.S.C. 802).

**History:** L. 1970, ch. 193, § 4; L. 1991, ch. 147, § 10; L. 1992, ch. 142, § 2; July 1.

**44-1019. Same; complaints; referral to local authority, when; investigation; administrative proceedings; election to file action in court; administrative remedial orders.**

- (a) The authority and responsibility for administering this act shall be in the commission. Any person aggrieved may file a verified complaint with the commission. Such complaints shall be in writing, shall state the facts upon which the allegations of a discriminatory housing practice are based and shall contain such other information and be in such form as the commission may require. Complaints must be filed within one year after the alleged discriminatory housing practice occurred, but may be reasonably and fairly amended at any time. The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. A respondent may file a verified answer to the complaint against the respondent and with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend the answer filed by the respondent at any time.
- (b) Upon receipt of any such complaint the commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this act; and the commission shall within 10 days thereof serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this act, together with a copy of the original complaint. Service of the notice shall be made in the manner prescribed by the code of civil procedure.

- (c) Whenever a local fair housing ordinance provides rights and remedies for alleged discriminatory housing practices which are, in the judgment of the commission, substantially equivalent to the rights and remedies provided in this act, the commission shall refer to the appropriate local agency any complaint filed under this act which appears to constitute a violation of such local fair housing ordinance. The commission shall take no further action with respect to such complaint until 30 days have elapsed since the complaint was referred to the local agency, or the local agency has completed its investigation, or the local agency requests the commission to assume jurisdiction or to assist it, whichever occurs first. The local agency shall inform the commission in writing of the status of the referred complaint at the end of the referral period or when the local agency has completed its investigation, whichever occurs first. The commission may take further action on the complaint if in its judgment the protection of the rights of the parties or the interests of justice require such action.
- (d) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsections (a) and (b), to such person, from the commission.
- (e)
  - (1) If a complaint is not referred to a local agency as provided in subsection (b), or after the commission assumes jurisdiction of a complaint following such referral, the commission shall promptly commence an investigation thereof, in the manner provided in K.S.A. 44-1005, and amendments thereto, for investigating complaints of violations of the Kansas act against discrimination, and complete such investigation, including conciliation, within 100 days after the filing of the complaint or, when the commission takes further action under subsection (c), within 100 days after the commission assumes jurisdiction of a complaint, unless it is impracticable to do so.
  - (2) If the commission is unable to complete the investigation within 100 days, or when the commission takes further action under subsection (c), within 100 days after the commission assumes jurisdiction of a complaint, the commission shall inform the parties in writing of the reasons for not doing so.
  - (3) The commission shall make final administrative disposition within one year after the filing of the complaint or, when the commission takes further action under subsection (c), within one year after the commission assumes jurisdiction of a complaint, unless it is impracticable to do so.
  - (4) If the commission is unable to make final administrative disposition of the complaint within one year of the date of filing, or when the commission takes further action under subsection (c), within one year after the commission assumes jurisdiction of a complaint, the commission shall inform the parties in writing of the reasons for not doing so.
- (f)
  - (1) If it is determined that probable cause exists for crediting the allegations of the complaint, the commission shall serve written notice of such determination on the person aggrieved. The commission shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion which shall be held, insofar as possible, in the cities or other localities where the alleged discriminatory housing practices have occurred or are about to occur. The commission is hereby authorized to enter into formal conciliation agreement which shall include the person aggrieved and the respondent as signatories. Such agreements may include in the provisions thereof any term or condition which may be included in a final order of the commission. Each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this act.
  - (2) Any of the parties to a conciliation agreement may apply to the district court of the county where the alleged discriminatory housing practice occurred, or was about to occur, for specific performance of any such agreement.
- (g) If the commission is unable to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, a hearing may be held before the commission in the manner provided in K.S.A. 44-1005, and amendments thereto, for

holding hearings under the Kansas act against discrimination. In any such hearing, the burden of proof shall be on the complainant.

- (h) In lieu of a hearing under subsection (g), a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the complaint decided in a civil action as provided in subsection (d) of K.S.A. 44-1021, and amendments thereto. The election must be made not later than 20 days after the receipt by the electing person of service in the manner provided in K.S.A. 44-1005, and amendments thereto, or, in the case of an election by the commission, not later than 20 days after such service. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. If a timely election is made under this subsection, the commission shall file, not later than 30 days after the election is made, a civil action as provided in subsection (d) of K.S.A. 44-1021, and amendments thereto.
- (i) If an election is not made under subsection (h) and the commission finds that a respondent has engaged in or is engaging in any discriminatory housing practice, the commission shall render an order requiring the respondent to cease and desist from such discriminatory housing practice, and such order may direct a respondent to take such affirmative action as the commission deems necessary to effectuate the intent and purposes of this act, including, but not limited to, the selling or renting of specified real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of real property. Such order may also include an award of actual damages, including damages caused by pain, suffering and humiliation. Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:
  - (1) In an amount not exceeding \$10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
  - (2) subject to the provisions of subsection (i)(4), in an amount not exceeding \$25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint;
  - (3) subject to the provisions of subsection (i)(4), in an amount not exceeding \$50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint; and
  - (4) if the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice in the amounts provided by subsections (i)(2) and (i)(3) without regard to the period of time within which any subsequent discriminatory housing practice occurred.

Any such civil penalty 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.

- (j) Within 15 days after an order is served by the commission requiring or prohibiting action by a respondent, the respondent shall notify the commission in writing of the manner in which the respondent has complied with the order.
- (k) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a state agency, the commission shall, not later than 30 days after the respondent has complied with the order, or, if such order is judicially reviewed under K.S.A. 44-1021, and amendments thereto, 30 days after such order is in substance affirmed upon such review:
  - (1) Send copies of the findings of fact, conclusions of law, and the order, to that state agency; and
  - (2) recommend to the state agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

**History:** L. 1970, ch. 193, § 5; L. 1972, ch. 194, § 10; L. 1984, ch. 186, § 2; L. 1988, ch. 356, § 151; L. 1991, ch. 147, § 11; L. 1992, ch. 142, § 3; L. 2001, ch. 5, § 146; July 1.

**44-1020. Same; subpoenas; witness fees and mileage; interim judicial relief; criminal enforcement of subpoenas.**

- (a) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at respondent's request.
- (b) Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are allowed witnesses in proceedings in district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.
- (c) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this act, the commission may bring a civil action in the district court of the county in which the alleged discriminatory housing practice is alleged to have occurred, for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. The commission shall promptly notify the attorney general of the filing of any action pursuant to this subsection. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this act.
- (d) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in such person's power to do so in obedience to the subpoena or lawful order of the commission, shall, upon conviction, be fined not more than \$1,000 or imprisoned for not more than one year, or both such fine and imprisonment. Any person who, with intent thereby to mislead the commission, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document, submitted to the commission pursuant to subpoena or other order of the commission, or who shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or who shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall, upon conviction, be fined not more than \$1,000 or imprisoned for not more than one year, or both such fine and imprisonment.

**History:** L. 1970, ch. 193, § 6; L. 1972, ch. 194, § 11; L. 1991, ch. 147, § 12; Jan. 1, 1992.

**44-1021. Same; judicial review of commission action; civil enforcement of act.**

- (a) Within 45 days after the entry of an order by the commission pursuant to K.S.A. 44-1019 and amendments thereto or within 30 days after the commission has received written notification of the manner in which a respondent has complied with the commission's order, the commission or a person aggrieved may bring a civil action in the district court of the county in which the alleged discriminatory housing practice is alleged to have occurred or in which the respondent resides or transacts business, but upon application by the person aggrieved and the commission, the attorney general or the appropriate district or county attorney may provide the attorney necessary to bring the action authorized herein. Such action may be brought to enforce the order of the commission, or to enforce any of the rights granted or protected by K.S.A. 44-1016, 44-1017 and 44-1026, and amendments thereto, insofar as such rights relate to the subject of the complaint with respect to which the order was issued. All such actions shall be heard by the court in a trial *de novo*. Upon application of any party to such action, the commission shall make available to all parties the records and information gathered during any investigation or hearing conducted pursuant to the authority granted by this act, except that any records or information concerning the commission's efforts to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion shall not be admissible as evidence in such action. If the respondent shall request a copy of the transcript of the hearing, the respondent shall pay for the cost of its preparation.
- (b) If the court finds that a discriminatory housing practice has occurred, or is about to occur, the court may, in its discretion, grant as relief any permanent, temporary or mandatory injunction, temporary restraining order or other proper order, but any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this act, and

involving a bona fide purchaser, encumbrancer or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this act, shall not be affected.

- (c) Whenever a complaint is filed, or a civil action commenced, under the provisions of this act, the commission may post notice thereof on any real property which is the subject of such complaint or action.
- (d)
  - (1) An aggrieved person may commence a civil action in a district court of the county in which the alleged discriminatory housing practice is alleged to have occurred or in which the respondent resides or transacts business not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice. Except in the case of an action arising from a breach of a conciliation agreement, the computation of the two-year period shall not include any time during which an administrative proceeding under this act was pending with respect to a complaint under this act based on such discriminatory housing practice.
  - (2) If the United States department of housing and urban development, the commission or a local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.
  - (3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a hearing under K.S.A. 44-1019 and amendments thereto.
  - (4) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages and, subject to subsection (d)(5), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate. The court, in its discretion, may allow the prevailing party, other than the state of Kansas, reasonable attorney fees and costs. The state of Kansas shall be liable for such fees and costs to the same extent as a private person.
  - (5) Relief granted under this subsection shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer or tenant, without actual notice of the filing of a complaint with the commission or civil action under this act.

**History:** L. 1970, ch. 193, § 7; L. 1972, ch. 194, § 12; L. 1991, ch. 147, § 13; L. 1992, ch. 142, § 4; July 1.

**44-1022. Same; civil action by attorney general, when.** Whenever the attorney general or any district or county attorney, within the appropriate county, has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this act, or that any group of persons has been denied any of the rights granted by this act and such denial raises an issue of general public importance, the attorney general or district or county attorney may bring a civil action, within one year after the alleged discriminatory housing practice occurred, in the district court where an action may be commenced pursuant to K.S.A. 44-1021 and amendments thereto, requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice or denial of rights, as the attorney general or district or county attorney deems necessary to insure the full enjoyment of the rights granted by this act.

**History:** L. 1970, ch. 193, § 8; L. 1991, ch. 147, § 14; Jan. 1, 1992.

**44-1023. Same; assignment of case; expedition.** Any court in which a proceeding is instituted under K.S.A. 44-1021 or 44-1022 shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

**History:** L. 1970, ch. 193, § 9; July 1.

**44-1024. Same; effect of city ordinances governing housing practices.** Nothing in this act shall be construed to invalidate or limit any ordinance of any city in this state that grants, guarantees or protects the same rights as are granted by this act; but any ordinance of a city that purports to require or permit any action that would be a discriminatory housing practice under this act shall, to that extent, be invalid.

**History:** L. 1970, ch. 193, § 10; July 1.

**44-1025. Same; cooperation of commission with local agencies; agreements.** The commission may cooperate with local agencies charged with the administration of local fair housing ordinances and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the commission in carrying out this act. In furtherance of such cooperative efforts, the commission may enter into written agreements with such local agencies. All such agreements and terminations thereof shall be made available to the public by the commission.

**History:** L. 1970, ch. 193, § 11; July 1.

**44-1026. Same; unlawful acts; enforcement of section.** It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by K.S.A. 44-1016 or 44-1017, and amendments thereto.

**History:** L. 1970, ch. 193, § 12; L. 1991, ch. 147, § 15; Jan. 1, 1992.

**44-1027. Same; unlawful act; penalties.**

(a) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with:

(1) Any person because of such person's race, religion, color, sex, disability, familial status, national origin or ancestry and because such person is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any real property, or applying for or participating in any service, organization or facility relating to the business of selling or renting real property;

(2) any person because such person is or has been, or in order to intimidate such person or any other person or any class of persons from:

(A) Participating, without discrimination on account of race, religion, color, sex, disability, familial status, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (a)(1); or

(B) affording another person or class of persons opportunity or protection so to participate; or

(3) any citizen because such citizen is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, religion, color, sex, disability, familial status, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (a)(1), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(b) Violation of this section is punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment, except that:

(1) If bodily injury results, such violation shall be punishable by a fine of not more than \$10,000 or imprisonment for not more than 10 years, or both such fine and imprisonment; and

(2) if death results, such violation shall be punishable by imprisonment for any term of years or for life.

**History:** L. 1970, ch. 193, § 13; L. 1972, ch. 194, § 13; L. 1991, ch. 147, § 16; Jan. 1, 1992.

**44-1028. Same; severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

**History:** L. 1970, ch. 193, § 14; July 1.

**44-1029. Same; act supplemental.** This act shall be supplemental to and a part of the Kansas act against discrimination.

**History:** L. 1970, ch. 193, § 15; July 1.

**44-1030. State and local government contracts; mandatory provisions.**

- (a) Except as provided by subsection (c), every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:
- (1) The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
  - (2) in all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
  - (3) if the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
  - (4) if the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - (5) the contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (b) The Kansas human rights commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas act against discrimination.
- (c) The provisions of this section shall not apply to a contract entered into by a contractor:
- (1) Who employs fewer than four employees during the term of such contract; or
  - (2) whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

**History:** L. 1972, ch. 194, § 14; L. 1977, ch. 183, § 1; L. 1991, ch. 147, § 17; L. 1992, ch. 91, § 3; April 23.

**44-1030a. History:** L. 1972, ch. 194, § 14; L. 1977, ch. 183, § 1; L. 1991, ch. 148, § 5; Repealed, L. 1992, ch. 91, § 4; April 23.

**44-1031. Same; personnel to be used in performing contracts; reports; nonapplication to certain contractors.** Every person, as defined in subsection (a) of K.S.A. 44-1002, who wishes to enter into a contract which is covered by the provisions of K.S.A. 44-1030 shall, upon request of the commission, inform the commission in writing of the manner in which such person shall recruit and screen personnel to be used in performing the contract. The report shall be made on forms to be supplied by the commission. The provisions of K.S.A. 44-1030 and of this section shall not apply to any contractor who has already complied with the provisions of such sections by reason of holding a contract with the federal government or a contract involving federal funds.

**History:** L. 1972, ch. 194, § 15; L. 1975, ch. 264, § 8; L. 1977, ch. 183, § 2; July 1.

**44-1032. Responsibility for and review of compliance with act; subpoenas; access to premises; oaths and depositions; failure to obey court order, effect; immunity of witnesses from prosecution; perjury.** The contracting agency shall be responsible for assuring compliance with the provisions of K.S.A. 44-1030. The commission, on its own motion or at the request of the contracting agency, may review compliance with the provisions of this act. In conducting such reviews, the commission may subpoena witnesses, compel their appearance, require the production for examination of records, documents and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such

persons. The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction: *Provided, however,* That the commission first complies with the provisions of article 15 of the Kansas bill of rights and the fourth amendment to the United States constitution relating to unreasonable searches and seizures. The commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, or to testify to any matter regarding which he may be lawfully questioned, the district court of any county may, upon application of the commission, order such person to comply with such subpoena or interrogatory and to testify; and failure to obey the court's order may be punished by the court as contempt. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he testifies or produces evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons.

**History:** L. 1972, ch. 194, § 16; July 1.

**44-1033. Initiation and processing complaints; use of information.** If the compliance review conducted by the commission reveals any violation of the Kansas act against discrimination, the commission may initiate a complaint and process such complaint in the manner provided for processing complaints of unlawful employment practices. The information gathered in the course of the compliance review may be used in processing the complaint.

**History:** L. 1972, ch. 194, § 17; July 1.

**44-1034. Rules and regulations.** The commission may adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this supplemental act.

**History:** L. 1972, ch. 194, § 18; July 1

**44-1035 Information on racial identification maintained solely on payroll tapes; retrieval restricted.** Information concerning the racial identification of state employees shall be permanently maintained solely on the payroll tapes in custody of the state department of administration. Such information shall be retrieved from the payroll tapes only upon the written authorization of the commission or the equal employment opportunity office of the department of administration. The department of administration may provide such information to the director of personnel services in statistical form without the identification of specific individuals if the director of personnel services shall make such request.

**History:** L. 1972, ch. 194, § 19; L. 1978, ch. 345, § 7; July 1.

**44-1036. Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

**History:** L. 1972, ch. 194, § 20; July 1.

**44-1037. Liberal construction.** The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof.

**History:** L. 1972, ch. 194, § 21; July 1.

**44-1038. Provisions of 44-1031 to 44-1037 supplemental to act against discrimination.** The provisions of K.S.A. 44-1031 to 44-1037, inclusive, shall be supplemental to and a part of the Kansas act against discrimination.

**History:** L. 1972, ch. 194, § 22; July 1.

**44-1039. Unlawful act; perjury.** Any person willfully, knowingly, and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation required by the

Kansas act against discrimination shall be deemed guilty of perjury as defined by K.S.A. 21-3805 and any amendments thereto.

**History:** L. 1975, ch. 264, § 5; July 1.

**44-1040. History:** L. 1975, ch. 264, § 6; Repealed, L. 1988, ch. 356, § 361; July 1, 1989.

**44-1041. Unlawful acts; penalty.** Any person (a) destroying any employment records required to be kept under the laws of the state of Kansas for the purpose of hindering any proceeding commenced pursuant to the provisions of the Kansas act against discrimination or (b) destroying any records or other information involved in any proceeding brought pursuant to the provisions of the Kansas act against discrimination for the purpose of hindering such proceedings, shall be guilty of a class B misdemeanor.

**History:** L. 1975, ch. 264, § 7; July 1.

**44-1042. Award of compensatory damages; reduction.** If the commission includes an award of compensatory damages in any final order entered against a respondent after a hearing or if an award of compensatory damages against a respondent is included in a conciliation agreement, the total amount of such damages awarded shall be reduced by the amount of any compensation received by the complainant as a direct result of the alleged act of discrimination from the time the alleged act of discrimination occurred until the time such order is entered or agreement is entered into.

**History:** L. 1975, ch. 264, § 9; July 1.

**44-1043. Provisions of 44-1039 to 44-1042 supplemental to act against discrimination.** The provisions of K.S.A. 44-1039 to 44-1042, inclusive, shall be supplemental to and a part of the Kansas act against discrimination.

**History:** L. 1975, ch. 264, § 10; July 1.

**44-1044 Probable cause determinations under 44-1005 or 44-1019; exempt from judicial review and civil enforcement of agency actions act.** 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 act for judicial review and civil enforcement of agency actions (K.S.A. 77-601 through 77-627, and amendments thereto).

**History:** L. 1985, ch. 308, § 1; L. 1991, ch. 148, § 6; July 1.

**44-1101 to 44-1109. History:** L. 1970, ch. 194, §§ 1 to 9; Repealed, L. 1972, ch. 194, § 23; July 1.

## KANSAS AGE DISCRIMINATION IN EMPLOYMENT ACT

**44-1111. Kansas age discrimination in employment act.** This act shall be known as and may be cited as the Kansas age discrimination in employment act.

**History:** L. 1983, ch. 164, § 1; July 1.

**44-1112. Definitions.** As used in this act:

- (a) "Age" means an age of 40 or more years.
- (b) "Commission" means the Kansas human rights commission created pursuant to K.S.A. 44-1003 and amendments thereto.
- (c) "Employee" does not include any individual employed by the individual's parents, spouse or child.
- (d) "Employer" means any person in this state who employs four or more persons and any person acting directly or indirectly for such a person, and includes the state and all political subdivisions of the state.
- (e) "Employment agency" includes any person or governmental agency undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees.
- (f) "Firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.
- (g) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in relation to employment.
- (h) "Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses against the criminal laws of Kansas or of offenses against any ordinance or resolution which imposes criminal sanctions and is adopted by a city, county or other political subdivision of Kansas, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purposes of this subsection, "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.
- (i) "Person" means individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver.

**History:** L. 1983, ch. 164, § 2; L. 1988, ch. 174, § 1; L. 1991, ch. 148, § 7; July 1; L. 2008, ch. 105, § 4; July 1.

**44-1113. Unlawful employment practices based on age.**

- (a) It is an unlawful employment practice based on age to engage in any of the following acts in any manner which would limit, deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee or applicant for employment:
  - (1) For an employer, because of the age of a person, to refuse to hire or employ the person, to bar or discharge the person from employment or to otherwise discriminate against the person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regard to employees because of age without a valid business motive.
  - (2) For an employer to reduce the wage rate of any employee in order to comply with the Kansas age discrimination in employment act.
  - (3) For a labor organization, because of the age of a person, to exclude or to expel the person from its membership or to discriminate in any way against any of its members or against any employer or any person employed by an employer because of age.
  - (4) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of

application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, or any intent to make any such limitation, specification or discrimination.

- (5) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because the person has opposed any practices or acts forbidden under this act or has filed a complaint, testified or assisted in any proceeding under this act.
- (6) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of age to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to age.
- (7) For an employer, labor organization, employment agency or school which provides, coordinates or controls apprenticeship, on-the-job or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of age, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.
- (8) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.
- (9) For an employer, employment agency, labor organization or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits:
  - (A) In the case of a benefit plan, the cessation of an employee's benefit accrual or the reduction of the rate of an employee's benefit accrual, because of age; or
  - (B) in the case of a contribution plan, the cessation of allocations to an employee's account or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

Nothing in this subsection (a)(9) shall be construed to prohibit an employer, employment agency or labor organization or any combination thereof from observing any provision of an employee pension benefit plan to the extent that such provision imposes, without regard to age, a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

- (b) It shall not be an unlawful employment practice to:
  - (1) Take any action on the basis of age, which is otherwise prohibited under subsection (a), if age is a bona fide occupational qualification necessary to the normal operation of the particular business or if the differentiation is based on necessary factors other than age;
  - (2) observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of article 10 of chapter 44 of Kansas Statutes Annotated, except that no such employee benefit plan shall excuse the failure to hire any individual and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual;
  - (3) observe the provisions of a retirement, pension or other benefit plan permitted by state or federal law or by ordinance or resolution; or
  - (4) Before January 1, 1994, for this state or any political subdivision of this state, or any agency or instrumentality thereof, or any interstate agency, to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken:
    - (A) With respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable state or local law on March 3, 1983, and
    - (B) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purpose of this act.

**History:** L. 1983, ch. 164, § 3; L. 1988, ch. 174, § 2; April 28.

**44-1114. Posting of act.** Every person subject to this act shall keep posted in a conspicuous place or places on the person's premises notices to be prepared or approved by the commission, which shall set forth excerpts of this act and such other relevant information which the commission considers necessary to explain the act.

**History:** L. 1983, ch. 164, § 4; July 1.

**44-1115. Complaint procedure; hearings; orders; rehearing; court review; dismissal of certain complaints, when, procedure and effect.** Any person aggrieved by any alleged unlawful employment practice based on age may file a complaint in the manner provided for processing complaints of unlawful employment practices under the Kansas act against discrimination. Reconsideration and judicial review of the commission's decision in the case shall be conducted in the manner provided by K.S.A. 44-1010 and 44-1011, and amendments thereto. Complaints filed with the commission on or after July 1, 1996, may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Complaints filed with the commission before July 1, 1996, shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas age discrimination in employment act for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing of a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto.

**History:** L. 1983, ch. 164, § 5; L. 1988, ch. 356, § 152; L. 1995, ch. 247, § 3; July 1.

**44-1116. Contractors; requirements.**

- (a) Contractors subject to the provisions of K.S.A. 44-1030, 44-1031 and 44-1032, and amendments thereto, shall be required to agree to the same contract provisions with respect to age discrimination and compliance with this act as provided by those sections with respect to other types of discrimination and compliance with the Kansas act against discrimination.
- (b) The commission shall have the powers provided by K.S.A. 44-1030, 44-1031 and 44-1032, and amendments thereto, to enforce the provisions of this section.

**History:** L. 1983, ch. 164, § 6; July 1.

**44-1117. Unlawful acts; penalties.**

- (a) No person shall willfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this act or shall willfully violate any order of the commission.
- (b) Violation of this section is a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$500, or both.
- (c) Lawful use of procedures for review of a commission order shall not be considered a violation of this section.

**History:** L. 1983, ch. 164, § 7; July 1.

**44-1118. Construction of act; applicability of act, exclusions.**

- (a) The provisions of this act shall be construed liberally for the accomplishment of its purposes.
- (b) Nothing in this act shall be construed to be inconsistent with the nondiscrimination provisions under another provision of state or federal law.
- (c) Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.
- (d) Nothing in this act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the two-year period immediately before retirement, is

employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

- (e) Nothing in this act shall be construed to prohibit, before January 1, 1994, compulsory retirement of any employee who has attained 70 years of age and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education.

**History:** L. 1983, ch. 164, § 8; L. 1988, ch. 174, § 3; April 28; L. 2008, ch. 105, § 5; July 1.

**44-1119. Severability of provisions.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

**History:** L. 1983, ch. 164, § 9; July 1.

**44-1120. Applicability, construction and effective date of 1988 act.**

- (a) This act and the amendments made by this act shall take effect on the effective date of this act, except that, with respect to any employee who is subject to a collective bargaining agreement, such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first, if such collective bargaining agreement:

- (1) Is in effect prior to the effective date of this act;
- (2) terminates on or after the effective date of this act;
- (3) has any provision which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and
- (4) contains any provision that would be superseded by such amendments, but for the operation of this section.

- (b) This section shall be a part of and supplemental to the Kansas age discrimination in employment act.

**History:** L. 1988, ch. 174, § 4; April 28.

**44-1121. Rules and regulations.** The Kansas human rights commission may adopt suitable rules and regulations to carry out the provisions of the Kansas age discrimination in employment act.

**History:** L. 1989, ch. 148, § 1; L. 1991, ch. 148, § 8; July 1.

## RACIAL AND OTHER PROFILING LAW

**22-4606. Racial and other profiling; definitions.** As used in this act:

- (a) "Governmental unit" means the state, or any county, city or other political subdivision thereof, or any department, division, board or other agency of any of the foregoing.
- (b) "Law enforcement agency" means the governmental unit employing the law enforcement officer.
- (c) "Law enforcement officer" has the meaning ascribed thereto in K.S.A. 74-5602, and amendments thereto.
- (d) "Racial profiling" means the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender or religious dress in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement officer or agency is seeking to apprehend a specific suspect whose race, ethnicity, national origin, gender or religious dress is part of the description of the suspect.
- (e) "Routine investigatory activities" includes, but is not limited to, the following activities conducted by law enforcement officers and agencies in conjunction with traffic stops: (1) Frisks and other types of body searches, and (2) consensual or nonconsensual searches of persons or possessions, including vehicles, dormitory rooms, school lockers, homes and apartments.
- (f) "Collection of data" means that information collected by Kansas law enforcement officers after each traffic [stop].

**History:** L. 2005, ch. 159, § 1; July 1.

**22-4607. Same; task force; review of and recommendations on policies and procedures.**

- (a) A 15-member task force on racial profiling shall be appointed by the governor. The task force shall include representatives of the Kansas attorney general's office, the Kansas highway patrol, city and county law enforcement agencies, the Hispanic and Latino American affairs commission, the advisory commission on African-American affairs, the department of revenue, Kansas human rights commission, Kansas district courts, Kansas civil rights advocates and others who can assist in the performance of the functions of the task force.
- (b) The governor's task force on racial profiling shall work in partnership with local and state law enforcement agencies to review current policies and make recommendations for future policies and procedures statewide for the full implementation of the provisions of K.S.A. 22-4606 through 22-4611, and amendments thereto. The task force shall hold public hearings and meetings as needed to involve and inform the public on issues related to racial profiling.
- (c) On July 1, 2009, the governor shall appoint the membership of the task force. Any person serving as a member of the task force on June 30, 2009, may be reappointed. The terms of members appointed or reappointed to the task force shall expire on July 1, 2011. Vacancies occurring before the expiration of a term shall be filled in the same manner as the original appointment.
- (d) The chairperson of the task force shall be designated by the governor. The task force shall meet at the call of the chairperson at least quarterly or as often as necessary to carry out the functions of the task force.
- (e) The staff of the Kansas advisory commission on African-American affairs and the Kansas Hispanic/Latino American affairs commission shall provide administrative support to the task force and its chairperson.
- (f) Members of the task force attending a meeting of the task force, or any subcommittee meeting authorized by the task force, shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.
- (g) The task force shall make a report of its activity to the public each calendar year.
- (h) The provisions of this section shall expire on July 1, 2011.

**History:** L. 2005, ch. 159, § 2; L. 2006, ch. 179, § 1; L. 2009, ch. 126, § 1; July 1.

**22-4608. Same; unlawful for law enforcement to engage in.** It shall be unlawful for any law enforcement officer or any law enforcement agency to engage in racial profiling.

**History:** L. 2005, ch. 159, § 3; July 1.

**22-4609. Same; prohibited as sole basis for making stop or arrest** The race, ethnicity, national origin, gender or religious dress of an individual or group shall not be the sole factor in determining the existence of probable cause to take into custody or to arrest an individual or in constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a vehicle.

**History:** L. 2005, ch. 159, § 4; July 1.

**22-4610. Same; policies preempting profiling, requirements; annual reports of complaints.**

- (a) All law enforcement agencies in this state shall adopt a detailed, written policy to preempt racial profiling. Each agency's policy shall include the definition of racial profiling found in K.S.A. 2006 Supp. 22-4606, and amendments thereto.
- (b) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies within one year after the effective date of this act. The policies and data collection procedures shall be available for public inspection during normal business hours.
- (c) The policies adopted pursuant to this section shall include, but not be limited to, the following:
  - (1) A prohibition of racial profiling.
  - (2) Annual educational training which shall include, but not be limited to, an understanding of the historical and cultural systems that perpetuate racial profiling, assistance in identifying racial profiling practices, and providing officers with self-evaluation strategies to preempt racial profiling prior to stopping a citizen.
  - (3) For law enforcement agencies of cities of the first class, establishment or use of current independent citizen advisory boards which include participants who reflect the racial and ethnic community, to advise and assist in policy development, education and community outreach and communications related to racial profiling by law enforcement officers and agencies.
  - (4) Policies for discipline of law enforcement officers and agencies who engage in racial profiling.
  - (5) A provision that, if the investigation of a complaint of racial profiling reveals the officer was in direct violation of the law enforcement agency's written policies regarding racial profiling, the employing law enforcement agency shall take appropriate action consistent with applicable laws, rules and regulations, resolutions, ordinances or policies, including demerits, suspension or removal of the officer from the agency.
  - (6) Provisions for community outreach and communications efforts to inform the public of the individual's right to file with the law enforcement agency or the Kansas human rights commission complaints regarding racial profiling, which outreach and communications to the community shall include ongoing efforts to notify the public of the law enforcement agency's complaint process.
  - (7) Procedures for individuals to file complaints of racial profiling with the agency, which, if appropriate, may provide for use of current procedures for addressing such complaints.
- (d) Each law enforcement agency shall compile an annual report of all complaints of racial profiling received and shall submit the report on or before January 31 to the office of the attorney general for review. The annual report shall include:
  - (1) The date the complaint is filed;
  - (2) action taken in response to the complaint;
  - (3) the decision upon disposition of the complaint; and (4) the date the complaint is closed.Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

**History:** L. 2005, ch. 159, § 5; July 1.

**22-4611. Same; complaints, procedure; civil action.**

- (a) Any person who believes such person has been subjected to racial profiling by a law enforcement officer or agency may file a complaint with the law enforcement agency. The complainant may also file a complaint with the Kansas human rights commission. The commission shall review and, if necessary, investigate the complaint. The commission's designee shall consult with the head of the law enforcement agency before making final recommendations regarding discipline of any law enforcement officer or other disposition of the complaint.
- (b) Upon disposition of a complaint as provided for in subsection (a) the complainant shall have a civil cause of action in the district court against the law enforcement officer or law enforcement agency, or both, and shall be entitled to recover damages if it is determined by the court that such persons or agency engaged in racial profiling. The court may allow the prevailing party reasonable attorney fees and court costs.

**History:** L. 2005, ch. 159, § 6; July 1.