

Agency 21

Kansas Human Rights Commission

Editor's Note:

Effective July 1, 1991, the commission on civil rights became the Kansas human rights commission. All properties, moneys, appropriations, rights and authorities vested in the commission on civil rights were vested in the Kansas human rights commission. See K.S.A. 44-1003.

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21-1-1 to 21-12-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Articles 13 and 14.—RESERVED

Articles 15 to 29.—REVOKED

21-15-1 to 21-15-3. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-4. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-5. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-6 to 21-15-11. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-12. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-1. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-2 to 21-16-4. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-5. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1968; amended, E-7-5, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-6. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-8. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-9. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-10. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-1. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended, E-71-5, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-2 and 21-17-3. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-4. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-5. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-18-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-18-2. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-19-1 and 21-19-2. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-19-3 to 21-19-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-19-8 to 21-19-10. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-20-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-21-1 and 21-21-2. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-21-3 and 21-21-4. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-21-5. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; revoked Jan. 1, 1970.)

21-21-6 to 21-21-10. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-1 to 21-22-3. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-4. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended

Jan. 1, 1970; amended, E-71-36, Sep. 8, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-5 to 21-22-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-8. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-9 to 21-22-11. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-12. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-13 to 21-22-19. (Authorized by K.S.A. 1969 Supp. 44-1004; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-23-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-24-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-25-1 and 21-25-2. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-25-3 and 21-25-4. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-26-1 to 21-28-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-29-1 to 21-29-4. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 30.—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT

21-30-1. (Authorized by K.S.A. 44-1004 (3); effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-30-2. “Test” defined. For the purpose of the guidelines in this part, the term “test” is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measure of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term “test” includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers’ rating scales, scored application forms, etc. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-3. Discrimination defined. The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by the Kansas act against discrimination constitutes discrimination unless:

(a) The test has been validated and evidences a high degree of utility as hereinafter described, and

(b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-4. Evidence of validity. (a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 21-

30-3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term “technically feasible” as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test’s validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees’ potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected through-

out a multiunit organization, evidence of validity specific to each unit may not be required: *Provided*, That no significant differences exist between units, jobs and applicant populations. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-5. Minimum standards for validation. (a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test’s validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in “standards for educational and psychological tests and manuals” published by American Psychological Association, 1200 17th Street N. W., Washington, D. C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills, or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the con-

duct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of tests results, that are privately developed and/or are not available through normal commercial channels, must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups whenever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See 21-30-9.) A test which is differentially valid may be used in groups for which it is

valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including: (a) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available. (b) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory. (c) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-6. Presentation of validity evidence. The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. [See 21-30-5 (c) concerning assessing

utility of a test.] Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-7. Use of other validity studies. In cases where the validity of a test cannot be determined pursuant to 21-30-4 and 21-30-5 (*e.g.*, the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

(a) The studies pertain to jobs which are comparable (*i.e.*, have basically the same task elements), and

(b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-8. Assumption of validity. (a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and

other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-9. Continued use of tests. Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in 21-30-7 (a) and (b); and

(b) He has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-10. Employment agencies and employment services. (a) An employment service, including private employment agencies, and state employment agencies, as defined in K.S.A. 44-1002 (e), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program

and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity [see 21-30-8 (a)]. An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 21-30-7. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-11. Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by the Kansas act against discrimination where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by the Kansas act against discrimination who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-12. Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier “failure” candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested. (Authorized by

K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-13. Other selection techniques. Selection techniques other than tests, as defined in 21-30-2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 21-30-4 and 21-30-5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-14. Affirmative action. Nothing in these guidelines shall be interpreted as diminishing a person’s obligation under the Kansas act against discrimination to undertake affirmative action to ensure that applicants or employees are treated without regards to race, religion, color, national origin or ancestry. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by the Kansas act against discrimination. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-15. Word-of-mouth recruiting. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not recruit exclusively or even primarily by means of word-of-mouth referrals from present employees or present members. (Authorized by K.S.A.

1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1972.)

21-30-16. Preference to relatives, friends or neighbors of present employees or members. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not give preference in hiring or in admission to membership to relatives, friends or neighbors of present employees or present members by reason of such relationships. (Authorized by K.S.A. 1974 Supp. 44-1004, 44-1005; effective Jan. 1, 1972; amended, E-74-14, Dec. 28, 1973; amended May 1, 1975.)

21-30-17. Pre-employment inquiries and practices. K.S.A. 44-1009 (a) (3) prohibits, among others, the following pre-employment or pre-membership inquiries and practices:

(a) Inquiry into the birthplace of an applicant, the applicant's spouse or parents or any other close relative.

(b) Any requirement that an applicant submit a birth certificate, naturalization or baptismal record with his application.

(c) Any requirement or suggestion that an applicant submit a photograph with his application or at any time before he is hired.

(d) Inquiry into the name and address of any relative of an adult applicant other than applicant's spouse or children.

(e) Any inquiry into organization memberships, the name or character of which could indicate the race, religion, color, national origin or ancestry of the applicant. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-18. Affirmative action file. (a) Affirmative action file, need and use. Where affirmative action to increase the opportunity of minority groups for employment appears necessary to eliminate the effects of past pattern or individual discriminatory practices on the part of certain respondents and to assure future compliance with the Kansas act against discrimination, the commission may require and order per K.A.R. 21-45-21 an employer to maintain and utilize the application of potentially qualified minority group members in an "affirmative action file" when the commission has determined that such affirmative action is necessary to effectuate the purposes of the law. Before consulting other sources for ap-

plicants the commission may require that the respondent will give every consideration to the hiring of applicants from this file.

(b) Minority. "Minority" as used here means any person against whom an employer has been or is discriminating based on race, color, religion, sex, national origin or ancestry.

(c) Provisions. The affirmative action file provision in any conciliation agreement or commission order may provide, but is not limited to, the following provisions: "Affirmative action file: "1. Applications of members of minority groups which are not accepted or rejected per subpart (c) (4) hereof, shall be placed in a file, to be known as an affirmative action file. This file shall consist of all minority group applicants who are qualified for any position with the respondent, and those applicants whose qualifications have not been established.

"2. As job vacancies occur, the respondent shall consult the affirmative action file to determine if qualified applicants are available from the minority group members listed therein.

"3. Before consulting other sources for applicants, the respondent will give every consideration to the hiring of applicants from this file.

"4. If, after further review at the time a vacancy is available, the respondent concludes that the applicant is not qualified and cannot become qualified for any job within respondent's employ, he should remove his name from the file and notify him and the appropriate organization and agencies as identified in the commission order or conciliation agreement. If the applicant is still considered qualified, the respondent shall note on the file the date of each review and the reason for rejection. If the respondent is of the view that certain steps taken by the applicant could qualify him for employment, it shall so inform the applicant and the referring and sending institution, in writing, maintaining a copy in his file.

"5. The operation of the file shall be reported as provided by the commission." (Authorized by K.S.A. 1974 Supp. 44-1003, 1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-30-19. Recruitment and referral agencies. (a) Public and private services. Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers "to establish continuing relationships with referral sources which may include, but is not

limited to, (1) Public referral services and agencies; and

(2) Private referral agencies and services, including those operated for profit.”

(b) Recruitment. To the extent where necessary to eliminate the continuing effects or prior discrimination the commission may require employers to advertise vacancies and non-discriminatory hiring practices. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-30-20. Temporary employment. Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers to hire its summer, seasonal or any other temporary employees on the same basis as permanent employees. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 31.—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN OR ANCESTRY

21-31-1. Construction of BFOQ Exemption. The bona fide occupational qualification exemption of K.S.A. 44-1009 (a) (3) shall be strictly construed as it pertains to cases of national origin or ancestry. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-2. Covert and overt discrimination. The Kansas act against discrimination is intended to eliminate covert as well as the overt practices of discrimination, and the commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the commission have been denied equal opportunities for reasons which are grounded in national origin or ancestry considerations. Examples of cases of this character include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English language skill is not a requirement of the task to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin or ancestry; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized

by persons of a given national origin or ancestry; denial of equal opportunity because their name or that of their spouse reflects a certain national origin or ancestry; and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-3. Protection of noncitizens. The Kansas act against discrimination protects all individuals, both citizens and noncitizens, domiciled, residing or transient in the state of Kansas, against discrimination in employment, public accommodations and housing because of race, religion, color, national origin or ancestry. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-4. Protection of national security. Because discrimination of the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled, residing or transient in the state of Kansas may not be discriminated against on the basis of his citizenship, except that it is not an unlawful practice for an employer to refuse to employ any person who does not fulfill the requirements imposed in the interest of federal or state security pursuant to any statute of the United States or the state of Kansas or pursuant to any executive order of the president or the governor respecting the particular position or the particular premises in question. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

Article 32.—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

21-32-1. Sex as a bona fide occupational qualification. (a) The bona fide occupational qualification exceptions as to sex should be interpreted narrowly. Labels—“men's jobs” and “women's jobs”—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The commission will find that the following situations do not warrant the application of the bona fide occupational qualification exceptions: (a) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For

example, the assumption that the turnover rate among women is higher than among men.

(2) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(3) The refusal to hire an individual because of the preference of co-workers, the employer, clients or customers.

(4) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification unless the expense would be clearly unreasonable.

(b) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; regulation modified by 1975 HB 2633, May 6, 1975.)

21-32-2. Fringe benefits. “Fringe benefits,” as used herein includes medical, hospital, accident, life insurance and retirement benefits; profit sharing and bonus plans; leave and other terms, conditions and privileges of employment. (a) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(b) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the “head of the household” or “principle wage earner” in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that “head of the household” or “principle wage earner” status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the act.

(c) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to

make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is the situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(d) It shall not be a defense to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(e) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages on the basis of sex, or which differentiates in benefits on the basis of sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-3. Separate lines of progression and seniority systems. (a) It is an unlawful employment practice to classify a job as “male” or “female” or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that: (1) A female is prohibited from applying for a job labeled “male” or for a job in a “male” line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a “female” seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between “light” and “heavy” jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex could reasonably be expected to perform. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-4. Discrimination against married women. (a) The commission has determined that an employer’s rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination

based on sex prohibited by the Kansas act against discrimination. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex. This rule also applies to unmarried women who happen to be mothers for example; in many instances women who have small children in the home are denied employment. Such discrimination usually takes place at the initial employer's screening process through the asking of such questions as "How old are your children? How many children do you have? What are your plans for providing care for your children?"

(b) An employed woman should not have her employment terminated when she marries a man who works for the same business or institution by whom she is employed. At the same time, a woman should not be denied employment by an employer due to rules against nepotism if she is otherwise qualified to perform the required work. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-5. Pre-employment inquiries as to sex. Pre-employment inquiry may ask "Male . . . , Female . . . ," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-6. Pregnancy and childbirth. (a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is prima facie discrimination.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom, are for all job related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual

of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such termination is discriminatory if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d) Childbearing must be considered by the employer to be a justification for a leave of absence for female employees for a reasonable period of time. Following childbearing, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay without loss of service, credits, seniority or other benefits. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-7. Affirmative action. The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded. Such affirmative action may include but is not limited to notifying employment referral agencies that women are welcome to apply for all positions, recruiting at women's colleges and the use of advertising which is not classified by sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-8. Job opportunities advertising. It is a violation of the Kansas act against discrimination for a help wanted advertisement to indicate a preference, limitation, specification or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such columns headed "male" or "female," will be considered as an expression of preference, limitation, specification or discrimination based on sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

**Article 33.—GUIDELINES ON
DISCRIMINATION BECAUSE OF
RELIGION**

21-33-1. Statement of purpose. (a) The guidelines in this part have been adopted to contribute to the implementation of non-discriminatory personnel policies with respect to employee religious beliefs as required by the Kansas act against discrimination. The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their policies concerning employee religious beliefs conform with the basic purposes of the elimination of discrimination in employment as defined by the act.

(b) Observance of sabbath and other religious holidays. Regarding whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days, the commission finds that the duty not to discriminate on religious grounds, under the act, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer. Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable. The commission will review each case in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the people of Kansas. (Authorized by K.S.A. 1974 Supp. 44-1004, 44-1005; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

**Article 34.—GUIDELINES ON
DISCRIMINATION BECAUSE OF
DISABILITY**

21-34-1. Definitions. (a) "Covered entity" means an employer, labor organization, employ-

ment agency, or joint labor-management committee.

(b) "Direct threat" means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

(c) "Essential function" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential function" does not include the marginal functions of the position.

(d) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having such an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(3) Has none of the impairments defined in subsections (h)(1) or (2) of this section but is treated by a covered entity as having an impairment.

(f) "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by Controlled Substances Act or other provisions of Federal or Kansas law.

(g) "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) "Physical or mental impairment" means:

(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position the person holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

(j) "Qualification standards" means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.

(k) "Substantially limits" means:

(1) unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-2. Medical examinations and inquiries; general prohibition. The prohibition against discrimination as referred to in K.S.A. 44-1009(a)(1) and 44-1009(a)(8) shall include medical examinations and inquiries. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-3. Preemployment medical examinations and inquiries. (a) Prohibited examination or inquiry. A covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the applicant's disability, except as provided in 21-34-4.

(b) Acceptable inquiry. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter

147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-4. Employment entrance examinations and inquiries; exception. A covered entity may require a medical examination, inquiry, or both after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant, and may condition an offer of employment on the results of the examination, inquiry, or both if:

(a) all entering employees in the same job category are subjected to an examination, inquiry, or both regardless of disability;

(b) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

(1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(2) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(3) government officials investigating compliance with this act shall be provided relevant information on request; and

(c) the results of such physical examination, inquiry, or both are used only in accordance with these regulations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-5. Prohibited medical examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-6. Acceptable medical examinations and inquiries. (a) A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of

an employee health program available to employees at the work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(b) Information obtained under subsection (a) regarding the medical condition or history of any employee is subject to the requirements of subsections (b) and (c) of 21-34-4. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-7. Regulation of alcohol and drugs. These regulations do not prohibit a covered entity from:

(a) prohibiting the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) requiring that employees not be under the influence of alcohol or drugs at the workplace;

(c) requiring that employees behave in conformance with the requirements established pursuant to the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(d) holding an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(e) requiring that its employees employed in an industry subject to federal regulations comply with the standards established in those regulations, if any, regarding alcohol and the illegal use of drugs; and

(f) requiring that employees employed in sensitive positions in an industry subject to federal regulations comply with those regulations, if any, that apply to employment in sensitive positions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-8. Drug testing. (a) A test to determine the illegal use of drugs shall not be considered a medical examination.

(b) Nothing in this paragraph shall be construed to encourage, prohibit, or authorize the conducting of drug tests for the illegal use of drugs by job applicants or employees or making employment decisions based on the test results. (Authorized by K.S.A. 44-1004; implementing K.S.A.

44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-9. Transportation employees. Nothing in these regulations should be construed to encourage, prohibit, restrict or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the United States Department of Transportation of authority to:

(a) test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and/or for on-duty impairment by alcohol; and

(b) remove persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to subsection (b)(1) of this regulation from safety-sensitive positions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-10. Information from a drug test.

Any information regarding the medical condition or history of any employee or applicant obtained from a drug test, except information regarding illegal use of drugs, is subject to the requirements of subsections (b) and (c) of 21-34-4. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-11. Illegal use of drugs and alcohol; exception to the definition of "qualified individuals with a disability"; policies and procedures. (a) The term "qualified individual with a disability" shall not include any employee or applicant who is engaging in the illegal use of drugs, when the covered entity acts on the basis of the illegal use of drugs.

(b) Nothing in subsection (a) of this regulation shall be construed to exclude as a "qualified individual with a disability" an individual who:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or

(3) is erroneously regarded as engaging in the

illegal use of drugs, but is not engaging in the illegal use of drugs.

(c) It shall not be a violation of this act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b)(1) or (2) of this section is no longer engaging in the illegal use of drugs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-12. Regulation of smoking. A covered entity may prohibit or impose restrictions on smoking in places of employment. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-13. Direct threat; criteria for determination. (a) The determination that an individual with a disability poses a “direct threat” shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge, on the best available objective evidence, or both.

(b) In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) the duration of the risk;
- (2) the nature and severity of the potential harm;
- (3) the likelihood that the potential harm will occur; and
- (4) the imminence of the potential harm. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-14. Essential function; criteria for determination. (a) A job function may be considered essential for any of several reasons, including but not limited to the following:

- (1) the function may be essential because the reason the position exists is to perform that function;
- (2) the function may be essential because of the limited number of employees available among

whom the performance of that job function can be distributed; and

(3) the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(b) Evidence of whether a particular function is essential includes, but is not limited to:

- (1) the employer’s judgment as to which functions are essential;
- (2) written job descriptions prepared before advertising or interviewing applicants for the job;
- (3) the amount of time spent on the job performing the function;
- (4) the consequences of not requiring the incumbent to perform the function;
- (5) the terms of a collective bargaining agreement;
- (6) the work experience of past incumbents in the job; and
- (7) the current work experience of incumbents in similar jobs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-15. Direct threat as qualification standard. The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of that individual or others in the workplace. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-16. Infectious and communicable diseases; food handling jobs. (a) If an individual with a disability is disabled by an infectious or communicable disease and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(b) This regulation does not preempt, modify, or amend any State, county, or local law, ordinance or regulation applicable to food handling which:

- (1) provide greater or equal protection for the

rights of individuals with disabilities disabled by an infectious or communicable disease that are afforded by the Americans with Disabilities Act of 1990; and

(2) is designed to protect the public from individuals who pose a significant health risk to the health and safety of others, where that risk cannot be eliminated by reasonable accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-17. Substantially limit; criteria for determination. (a) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(1) the nature and severity of the impairment;

(2) the duration or expected duration of the impairment; and

(3) the permanent or long term impact of the impairment, or the expected permanent or long term impact of the impairment. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-18. Substantially limit; definition with respect to the major life activity of “working”; criteria for determination. (a) With respect to the major life activity of “working,” the term “substantially limits” means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(b) In addition to the factors listed in paragraph (a) of 21-34-17, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of “working”:

(1) the geographical area to which the individual has reasonable access;

(2) the job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also

disqualified because of the impairment (class of jobs); and

(3) the job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skill or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-19. Undue hardship; definition; criteria for determination. (a) “Undue hardship” means an action requiring significant difficulty or expense.

(b) Criteria for determination. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(1) the nature and net cost of the accommodation needed under this act, taking into consideration the availability of tax credits and deductions, outside funding, or both;

(2)(A) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation;

(B) the number of persons employed at the facility;

(C) the effect on expenses and resources, or any other impact of the accommodation upon the operation, of the facility;

(3)(A) the overall financial resources of the covered entity;

(B) the overall size of the business of a covered entity with respect to the number of its employees;

(C) the number, type, and location of its facilities; and

(4)(A) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity;

(B) the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-20. Exceptions to the definitions

of “disability.” (a) The term “disability” does not include:

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

(b) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-21. Health insurance, life insurance, and other benefit plans. (a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations, may underwrite risks, classify risks, or administer risks that are based on or not inconsistent with State law.

(b) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(c) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(d) The activities described in paragraphs (a), (b), and (c) are permitted unless these activities are a subterfuge to evade the purposes of this act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

Articles 35 to 39.—RESERVED

Article 40.—GENERAL PROVISIONS

21-40-1. Definitions. Incorporated by reference are the definitions of K.S.A. 44-1002. In addition, the following words and terms shall have the following meaning: (a) “Acting executive director” means the person appointed by the commission to perform the functions, powers and duties of the executive director, or the person appointed to perform the functions, powers and

duties of the executive director per rule K.A.R. 21-40-6.

(b) “Adjudication” means any order, decree, decision, determination or ruling affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

(c) “Attorney” means any licensed attorney currently admitted to practice before the supreme court of the state of Kansas or any attorney at law authorized to enter his appearance per rule K.A.R. 21-40-13.

(d) “Chairman” shall mean the chairman of the commission on civil rights duly designated by the governor pursuant to K.S.A. 44-1003, or, in the event of his absence, the acting chairman designated by the remaining members of the commission.

(e) “Commission” means the commission on civil rights created and amended by the Kansas act against discrimination, or as the context indicates, any member thereof.

(f) “Commissioner” shall mean one of the duly appointed members of the commission on civil rights.

(g) “Commission’s attorney” shall mean an attorney designated to assist the commission to carry out the provisions of this act subject to approval by the attorney general.

(h) “Complainant” shall mean any person filing a complaint with the commission.

(i) “Complaint” shall mean a written statement made under oath and filed with the commission alleging any violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(j) “Discrimination” means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or any other differentiation or preference in the treatment of a person or persons on account of race, religion, color, sex, physical handicap, national origin or ancestry, and/or any denial of any right, privilege, or immunity, secured or protected by the constitution or laws of Kansas or the United States. Discrimination shall include but not be limited to any practice which produces a demonstrable racial or ethnic effect without a valid business motive.

(k) “Executive director” means the executive director employed by the commission.

(l) “Formal record” means all the filings and

submittals in a matter or proceeding, any notice or agency order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, all exhibits received in evidence, all exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the commission, and determinations made by the commission thereon, certifications to the commission, and anything else upon which action of the presiding officer or the agency head may be based; but not including any proposed testimony or exhibits not offered or received in evidence.

(m) "Hearing commissioners" shall mean the commissioners designated by the chairman to conduct a pre-hearing, hearing, rehearing, reopen a hearing, or to proceed with any matter before the commission.

(n) "Interveners" means persons intervening or petitioning to intervene when admitted as a participant to a proceeding. Admission as an intervener shall not be construed as recognition by the commission that such intervener has a direct interest in the proceeding or might be aggrieved by any order of the commission in such proceeding.

(o) "Investigating commissioner" shall mean the commissioner duly designated by the commission to make investigation of a verified complaint filed with this commission, or to conduct any investigation initiated by the commission without the filing of a verified complaint.

(p) "Issue" means to prescribe or promulgate.

(q) "Matter or proceeding" means the elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon by the commission with respect to a particular subject by the commission, initiated by a filing or submittal or commission notice or order.

(r) "Party" means the complainant, the respondent, and any other person authorized by the commission to intervene in any proceeding.

(s) "Petitioners" means persons seeking relief, not otherwise designated in this section.

(t) "Pleading" means any application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

(u) "Presiding officer" means any member of the commission, or one or more hearing examiners appointed according to law and duly designated to preside at hearings or conferences, or

other officers duly designated to conduct specified classes of proceedings.

(v) "Probable cause" means the presence of a reasonable ground for belief in the existence of the alleged facts of a violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(w) "Proposed report" means the written statement of the issues, the facts, and the findings that a hearing examiner or other subordinate officer proposes the commission should make, with the reasons therefor, whether or not including a recommended order.

(x) "Respondent" shall mean any person against whom a complaint has been filed alleging an unlawful employment practice or unlawful discriminatory practice within the meaning of this act.

(y) "Segregation" shall include but not be limited to any practice which results in any discriminatory grouping.

(z) "Submittal" means any document filed in a nonadversary proceeding. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-2. Construction. These rules shall be liberally construed to accomplish the purposes of the act and the policies of the commission including the just, speedy, and inexpensive determination of the issues presented. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-3. Rules of order. Meetings of the commission shall be governed by Roberts rules of order, with the exception that the chairman may make motions, second motions already made and vote upon any matters. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-4. Cooperation with local agencies. The commission may cooperate with and utilize the services of local human relations commissions in fulfilling its responsibilities under the Kansas act against discrimination. The commission may enter into written agreements with local human relations commissions for such purposes. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-5. Exercise of executive func-

tions. The commission may use the executive director as its agent in exercising its executive functions, powers and duties. The commission shall annually compile a written evaluation of the executive director to be signed by the chairman or the designated acting chairman. The form used shall contain those items listed on form DA-226-7 (Rev. 72) as authorized by the department of administration of the state of Kansas. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-6. Death, disability or absence of executive director. Whenever, in the event of the death, disability or absence from the state of the executive director, it shall be necessary to appoint an acting executive director without delay, the chairman may make such appointment, subject to the ratification or rejection of the commission at the next meeting; *Provided, however,* That rejection of such appointment shall have no effect on any of the actions of the acting executive director in the interim. In the event of any temporary absence of the executive director, the assistant director is authorized to exercise the functions, powers and duties of the executive director until the executive director returns. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-7. Communications and filings generally. (a) All communications, submittals and pleadings should be addressed to the commission at the office of the commission unless otherwise specifically directed. All communication and filings should clearly designate the file number, docket number, or similar identifying symbols, if any, employed by the commission and should set forth a short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.

(b) In any proceeding when, upon inspection, the commission is of the opinion that a pleading or other matter tendered for filing does not comply with these rules or is otherwise insufficient, the commission may decline to accept the document for filing and may return it unfiled, or the commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(c) The commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any document filed with it.

(d) Except as may be otherwise ordered, the original copy of each pleading, submittal or other document shall be signed by the party in interest, or by his or its attorney, as required by subsection (e) of this section, and shall show the office and post office address of such party or attorney. All other copies filed shall be fully conformed thereto.

(e) Pleadings, submittals and other documents filed shall be subscribed: (i) by the person filing such documents, and severally if there is more than one person so filing; or

(ii) by an officer thereof if it is a corporation, trust, association, or other organized group; or

(iii) by an officer or employee thereof if it is another public agency or a political subdivision; or

(iv) by an attorney having authority with respect thereto.

(f) Documents filed by any corporation, trust, association, or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing such documents.

(g) The signature of the person subscribing any document filed constitutes a certificate by such individual that he had read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-8. Copies of pleadings. Upon filing any application, complaint, pleading, brief or other submittal, the party filing the same must file an original and nine copies thereof for the commission and furnish additional copies to the commission for each party who may be expected to participate in the proceeding. The commission may require the filing of such additional copies as it may need or desire. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-9. Commencement of a proceeding. A proceeding is commenced either by the filing of a complaint or other document or an order of the commission initiating an investigation

or complaint on its own motion. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-10. Docket. The commission shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The docket shall be available for inspection and copying by the public during the office hours of the agency insofar as consistent with the proper discharge of the duties of the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-11. Service. (a) Service by the commission. Orders, notices and other documents originating with the commission shall be served by the office of the commission by mail, except when service by another method shall be specifically designated by the commission, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at the person's principal office or place of business. When service is not accomplished by mail, it may be effected in person or as otherwise ordered by any one duly authorized by the commission.

(b) Service by a participant. All pleadings, submittals, briefs and other documents, filed in proceedings when filed or tendered to the commission for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant.

(c) Effect of service upon an attorney. When any participant has appeared by attorney, service upon such attorney shall be deemed service upon the participant and separate service on the party may be omitted.

(d) Date of service. The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

(e) Proof of service. There shall accompany and be attached to the original of each pleading, submittal or other document filed with an agency when service is required to be made by the parties, a certificate of service. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-12. Time. (a) Timely filing required.

Pleadings, submittals or other documents required or permitted to be filed under these rules or any other provision of law must be received for filing at the commission's office within the time limits, if any, for such filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

(b) Computation of time. Except as otherwise provided by law, in computing any period of time prescribed or allowed, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday, or a "legal holiday" as defined in K.S.A. 60-206, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(c) Issuance of orders. In computing any period of time involving the date of the issuance of an order the day of issuance of an order shall be the day the commission mails or delivers copies of the order to the parties, or if such delivery is not otherwise required by law, the day the commission makes such copies public. Orders will not be made public prior to the mailing or delivery to the parties, except where, in the judgment of the commission, the public interest so requires. The day of issuance of an order may or may not be the day of its adoption by the commission. In any event, the office of the agency shall clearly indicate on each order the day of its issuance.

(d) Extensions of time. (1) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may by the commission or the presiding officer, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended; and upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act. Requests for the extension of time in which to file briefs shall be filed at least five days before the time fixed for filing such briefs.

(2) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform any act required or allowed to be done at or within a specified time

by these rules or any order, shall be by motion in writing, timely filed with the agency, stating the facts on which the application rests, except that during the course of a hearing in a proceeding, such requests may be made by oral motion in the hearing before the commission or the presiding officer. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-13. Representation. (a) Appearance in person. An individual may appear in his own behalf. A member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another public agency or of a political subdivision may represent the public agency or political subdivision in presenting any submittal to an agency subject to these rules.

(b) Appearance by attorney. A person may be represented in any proceeding by an attorney-at-law who is a resident of Kansas and regularly admitted to practice before the supreme court of Kansas; or a person may appear and be represented by any regularly admitted practicing attorney in the courts of record of another state of the United States, who has filed a verified application to the effect that he has associated and personally appearing with him, in the proceeding before the commission, an attorney who is a resident of Kansas and duly qualified to practice law therein, as his local counsel. Said local counsel shall first enter his own appearance and then move for the admission of the non-resident attorney with whom he is associated.

(c) Other representation prohibited at hearings. A person shall not be represented at any hearing except: (1) as stated in K.A.R. 21-40-13 (a) (relating to appearance in person) or K.A.R. 21-40-13 (b) (relating to appearance by attorney); or

(2) as otherwise permitted by the commission in a specific case.

(d) Notice of appearance. (1) When an individual appears in his own behalf in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission or otherwise state on the record an address at which any notice or other written communication required to be served upon the person or furnished to the person may be sent.

(2) When an attorney appears before the com-

mission in a representative capacity in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission a written notice of such appearance, which shall state the attorney's name, address and telephone number and the name and address of the person or persons on whose behalf the attorney appears. Any additional notice or other written communication required to be served on or furnished to a person may be sent to the attorney of record for such person at the stated address of the attorney.

(3) Any person appearing or practicing before the commission in a representative capacity may be required to file a power of attorney with the agency showing his authority to act in such capacity.

(e) Suspension. The commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found to have engaged in unethical or improper conduct before the commission. Practicing before the commission shall include, but shall not be limited to: (1) Transacting any business with the agency.

(2) The preparation of any statement, opinion or other paper by an attorney, accountant, or other expert, filed with the commission in any pleading, submittal or other document with the consent of such attorney, accountant or other expert.

(f) Contemptuous conduct. Contemptuous conduct at any hearing shall be ground for exclusion from such hearing and for summary suspension without a hearing for the duration of the hearing. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-14. Order issuance. All orders issued by the commission shall be reviewed by the chairman and signed by him or as otherwise designated by the chairman. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-15. Effective date of orders. Commission orders shall become effective when all service provisions of these rules are effected, unless otherwise ordered by the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-16. Commission decisions. The

decisions of the commission or any panel of hearing commissioners shall be by majority vote. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-17. Intervention. (a) Initiation of intervention. At the discretion of the commission or presiding officer any person may by petition be allowed to intervene in person or by counsel, for such purposes and to such extent as the commission or presiding officer shall determine: Provided, Such person makes application to intervene at least ten (10) days before the hearing.

(b) Form and contents of petitions. Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding, so as fully and completely to advise the parties and the commission as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the proceeding, and citing by appropriate reference authority relied on.

(c) Notice and action on petitions. (1) Notice and service. Petitions to intervene, when tendered for filing, shall show service thereof upon all participants to the proceeding in conformity with § 21-40-11 (b) of this Title (relating to service by a participant.)

(2) Action on petitions. As soon as practicable after the expiration of the time for filing answers to such petitions or default thereof, the commission or presiding officer will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation.

(d) Limitation of participation in hearings. Where there are two or more interveners having substantially like interests and positions, the commission or presiding officer may, in order to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of such interveners. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-18. Certification of documents and records. Certified copies. Copies of and extracts from public records may be certified by the

commission. The chairman or such other person as may be designated by the commission is authorized to certify all documents or records of the commission. Persons requesting the commission to prepare such copies should clearly state the material to be copied and whether it shall be certified. Charges may be imposed for certification and for the preparation of copies. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-19. Requests to inspect other records not considered public. Request to inspect records other than those now deemed to be of a public nature shall be addressed to the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-20. Availability of rules. The rules of the commission shall be available to the public at the office of the commission and upon request. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 41.—COMPLAINTS

21-41-1. Who may file. (a) Filing and assistance. Any person claiming to be a complainant may sign and file with the commission a verified complaint in writing. Assistance in drafting and filing complaints shall be available to complainants at all commission offices or otherwise through the commission and its staff.

(b) On motion. The attorney general, or the commission on its own motion may file a complaint alleging any violation of any statute, rules or orders or other authority administered by the commission.

(c) Employer. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of the law, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-2. Forms. The complaint shall be in writing either on a form obtained at any of the offices of the commission or on any paper suitable for a complaint, the original being signed and verified before a notary public or other person duly authorized by law to take acknowledgments. No-

tarial service shall be furnished without charge by the commission. Every professional member of the commission's staff shall be a statewide notary public and as such may notarize any complaint. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-3. Contents. A complaint shall contain the following:

- (a) The full name and address of the complainant.
- (b) The full name and address of the respondent.
- (c) The alleged unlawful employment practice or unlawful discriminatory practice and a statement of the nature thereof.
- (d) The date or dates of the alleged unlawful employment practice or unlawful discriminatory practice, and if the alleged unlawful employment practice or unlawful discriminatory practice is of a continuing nature, the dates between which continuing acts of discrimination are alleged to have occurred.
- (e) A statement as to any other action instituted in any other forum based on the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-4. Time of filing. The complaint must be filed within six (6) months after the date of the occurrence of the alleged unlawful employment practice or unlawful discriminatory practice. If the alleged unlawful employment practice or unlawful discriminatory practice is of a continuing nature, the date of the occurrence of said unlawful employment practice or unlawful discriminatory practice shall be deemed to be any date subsequent to the commencement of the unlawful employment practice or unlawful discriminatory practice up to and including the date upon which the unlawful employment practice or unlawful discriminatory practice shall have ceased. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

~~**21-41-5. Manner of filing.** The complaint may be filed by personal delivery to any commission employee or by mail to the commission's office. (Authorized by K.S.A. 1974 Supp. 44-1003,~~

21-41-5. Manner of filing. A complaint may be submitted for filing by delivery, mail, facsimile, or electronic mail to a commission office. If a complaint is received when the commission offices are closed, the complaint shall be considered received on the next business day that the commission offices are open. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended Nov. 17, 2017.)

~~44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)~~

21-41-6. Amendment. The commission or the complainant shall have the power reasonably and fairly to amend the complaint as a matter of right at any time before hearing thereon, and thereafter at the discretion of the presiding officer. The respondent and the complainant shall be notified of any such amendment in writing by the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-7. Withdrawal. A complaint may be withdrawn by the complainant at any time before a finding has been made. After a finding has been made, the complainant may request and the commission shall decide whether or not a complaint may be withdrawn. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-8. Dismissal before hearing. (a) Dismissal. If the commission finds either on the face of the complaint or after investigation, with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the complaint shall be dismissed as to such respondent.

(b) Administrative convenience. If the commission finds that the complainant's objections to a proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undesirable, the commission may, at any time prior to a hearing, dismiss the complaint on grounds of administrative convenience.

(c) Service. When a complaint is dismissed before hearing, the commission shall issue and cause to be served upon each party a copy of the order dismissing the complaint, and stating the grounds for such dismissal. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-9. Discontinuance. After the service of a notice of hearing on a party, a proceeding may be discontinued by the complainant only with the consent of the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-10. Criminal and civil proceedings. When a complainant institutes either criminal or civil proceedings on a matter pending be-



fore the commission, the commission may, in its own discretion, suspend or dismiss action on a complaint based on the same matter. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-11. Service of complaint. A copy of the complaint and any amendments shall be promptly served by the commission on the respondent. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 42.—INVESTIGATION

21-42-1. Investigation. Any commissioner or presiding officer may request the commission to initiate an investigation whenever any possible violation of any statute, rules, orders or other authority administered by the commission appears. Upon such requests the commission may initiate such investigation. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-2. Subpoenas. Any commissioner or the executive director may sign and issue a subpoena in the name of the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-3. Investigating commissioner. Whenever an investigation of a complaint is initiated, an investigating commissioner shall be assigned the case. Whenever an investigation is initiated without the filing of a formal complaint, an investigating commissioner may be assigned to the case. The investigating commissioner so assigned shall have the same powers of discovery in the name of the commission as are provided in these rules for any commissioner or presiding officer relative to any hearing or other proceeding, including the power of subpoena per K.A.R. 21-42-2 and 21-45-9; and discovery dispositions in the same nature as provided by K.A.R. 21-45-10. If a formal complaint shall issue from the investigation, the same investigating commissioner shall be assigned to that complaint unless, in the judgment of the chairman, a new appointment should be made. The investigating commissioner may not participate in any subsequent proceedings which may eventually be held as a result of such investigation other than as a witness. (Authorized by

K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-4. Notice of investigation. Where an investigation is directed without the filing of a complaint, the commission will notify the person to be investigated of the nature and scope of such investigation. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-5. Preservation of records. (a) Employment records. When a complaint or notice of investigation has been served on an employer, labor organization or employment agency under the Kansas act against discrimination, the respondent shall preserve all personnel records relevant to the investigation until such complaint or investigation is finally adjudicated. The term “relevant to the investigation” shall include, but not be limited to, personnel, employment or membership records relating to the complainant and to all other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant, and application forms or test papers completed by an unsuccessful applicant and by all other applicants or candidates for the same position or membership as that for which the complainant applied and was not accepted, and any records which are relevant to the scope of the investigation as defined in the notice or complaint.

(b) Membership club records. Where a complaint or notice of investigation has been served on a membership club under the Kansas act against discrimination, the respondent shall preserve all records relevant to the investigation until such complaint or investigation is finally adjudicated. The term “relevant to the investigation” shall include, but not be limited to, applications for membership on file at the time the complaint or notice of investigation is served and those received following service of the complaint or notice of investigation whether or not they have been accepted or rejected, membership lists, records of payment of initiation fees or regular dues, together with the minutes of meetings of the club conducted in conformity with the constitutions or by-laws adopted by the membership.

(c) Other records. Any other books, papers, documents, or records of any form which are relevant to the scope of any investigation as defined in the notice or complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specif-

ically orders otherwise. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-6. Amendment. The commission in its discretion may amend the notice of investigation. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-7. Probable cause notice. The parties to the proceeding shall be notified by the commission of the investigating commissioner's final determination relative to probable cause. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 43.—CONFERENCE AND CONCILIATION

21-43-1. Conference. If the investigating commissioner finds that probable cause exists for crediting the allegations of the complaint, the investigating commissioner or such other commissioner as the commission may designate, shall, assisted by the executive director and the commission's staff, immediately endeavor to eliminate any unlawful practice or other matter in the complaint by conference, conciliation and persuasion. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-2. Time limitation for conciliations. Failure to arrive at a satisfactory adjustment within forty-five (45) days after respondent is notified in writing of a finding of probable cause may constitute sufficient reason for the commission to judge efforts at conference and conciliation to be a failure. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-3. Successful conciliation. (a) Preparation. If the investigating commissioner, or such other commissioner as the commission may designate, assisted by the executive director and the commission's staff, shall succeed in endeavors under conference and conciliation, then a proposed conciliation agreement shall be prepared.

(b) Agreement. The commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to

such terms within five (5) days after its service upon him, the commission may formally enter into the proposed conciliation agreement by issuing an order embodying such conciliation agreement. The commission shall serve a copy of such order upon all parties to the proceeding.

(c) Terms. The terms of such conciliation agreement may include any provisions and remedies, for retroactive, present or future effect, including all remedies which may be ordered by the commission per K.A.R. 21-45-21, and including a provision for the entry in court of a consent decree embodying terms of the conciliation agreement. When the commission accepts a conciliation agreement containing a provision for the entry in court of a consent decree, the commission's attorney, on behalf of and in the name of the commission, may commence a proceeding in the court to obtain an order for its enforcement. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-4. Consideration of complainant's objections. If the complainant objects to the proposed conciliation agreement, complainant shall, within five (5) days of the agreement's service upon complainant, serve a specification of the objections upon the commission. Unless such objections are met or withdrawn within five (5) days after service thereof, the commission shall thereafter notice the complaint for hearing, except in cases where the complaint may be dismissed on the grounds of administrative convenience. However, the commission, where it finds the terms of a conciliation agreement to be in the public interest, may execute such agreement if the respondent is still willing to execute it, and may limit the hearing to the objections of the complainant, unless the respondent demands a hearing on the merits of all of the charges by serving an answer including such a demand. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-5. Settlements. At the hearing, the commission's attorney, with the consent of the complainant, may stipulate with the respondent for settlement of the case and the commission may issue an order on such stipulation. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-6. Non-disclosure of facts. The commission shall not disclose what has transpired in the course of its endeavors at conciliation and persuasion, per K.S.A. 44-1005. However, when executed, the final terms of a conciliation agreement may be disclosed. No officer, agent or employee of the commission shall make public with respect to a particular person without his consent information from reports obtained by the commission except as necessary to the conduct of further commission proceedings. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 44.—COMPLIANCE

21-44-1. Compliance review. (a) Date. Not later than six (6) months from the date of a conciliation agreement or an order issued under article 45 of these rules, or at any other time in its discretion, including contract compliance review per K.S.A. 44-1032, the commission shall investigate whether the respondent is complying with the terms of such agreement, contract or order.

(b) Non-compliance. Upon a finding of non-compliance, the commission shall take appropriate action to assure compliance. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-2. Reports. (a) Filing. When any person subject to the jurisdiction of the commission is required to do or perform any act by the commission order, there shall be filed with the office of the commission within thirty (30) days following the date when such requirement became effective, a notice, stating that such requirement has been met or complied with, unless the commission directs otherwise.

(b) EEO forms. Every employer, labor organization and joint labor-management apprenticeship committee subject to the Kansas act against discrimination and also subject to the jurisdiction of the U.S. equal employment opportunity commission shall file with that agency the appropriate forms as required in accordance with that agency's instructions and regulations. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-3. Posting of law and information. "A conspicuous place or places" for the purposes of K.S.A. 44-1012 shall be any easily accessible and well lighted place or places where the notices

may readily be seen regularly by employees, applicants for employment, members of labor organizations, applicants for membership in labor organizations, or persons using or attempting to use places of public accommodations or the services of an employment agency, or any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-4. Records. No notation identifying the race, religion, color, sex, physical handicap, national origin or ancestry of an individual shall be made or maintained on application forms or other records except as provided otherwise in these rules. Violations of this rule shall be deemed evidence of discrimination unless a person may show it is acting in conformity with an explicit mandate of a local, state or federal civil rights agency. The commission recommends the maintenance of a permanent record as to the racial, sexual, religious or ethnic identity of an individual for the purpose of complying with various reporting requirements only where the person maintains such records separately from the individual's basic personnel file or other similar records available to those responsible for decisions (*e.g.*, as a part of an automatic data processing system in the payroll department). (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-5. Membership club references. Membership clubs which are covered by the Kansas act against discrimination may not require a recommendation by a present member or members as a prerequisite for admission to membership if the present membership does not bear a reasonable relationship to the ethnic and racial pattern of the general population of the area from which such clubs draw members; nor, in such circumstances, may they give preference to applicants recommended by present members by reason of such recommendation. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 45.—PROCEEDINGS

21-45-1. Notice of hearing. The notice of hearing shall inform the respondent of the time and place of the hearing and that respondent may

file written answer to the complaint. The notice of hearing and verified copy of the complaint, as the same may have been amended, shall be served by certified mail, return receipt requested, or by personal service on all parties. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-2. Answer. (a) Time of filing. The respondent against whom a verified complaint, as the same may have been amended, is filed and on whom a notice of hearing and a copy of such complaint have been served, may file a written verified answer in person or through an attorney-at-law within ten (10) days from the service of such complaint and notice of hearing.

(b) Form of answer. The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense. Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, shall be deemed admitted. The answer shall contain the post-office address of the respondent, and if he is represented by an attorney, the identification of said attorney as otherwise provided by the rules.

(c) Amendment of answer. The answer or any part thereof may be amended as a matter of right at any time before the first hearing and thereafter in the discretion of the presiding officer on application duly made therefore.

(d) Amendment of answer upon amendment of complaint. In any case where a complaint has been amended, the respondent shall have an opportunity to amend his answer within such period as may be fixed by the presiding officer, and the hearing shall be postponed to a date at least fifteen (15) days after the filing of such amended complaint.

(e) Failure to file answer. The presiding officer may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the notice of hearing and may make its findings of fact and enter its order upon the testimony taken at the hearing. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-3. Consolidation. By order of the commission, proceedings involving common questions of law or fact may be joined for hearing of any or all matters in issue and such proceedings may be consolidated; and any commissioner or presiding officer may make such orders concerning the conduct of the proceedings as may avoid unnecessary costs or delay. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-4. Waiver of hearing. In any proceeding if the participants waive hearing the commission may forthwith dispose of the matter upon the basis of the pleadings or submittals and the studies of the staff. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-5. Hearing calendar. The commission will maintain a hearing calendar of all proceedings set for hearing. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-6. Placement on calendar. In the absence of cause requiring otherwise, and as time, the nature of the proceedings, and the proper execution of the functions of the commission permit, matters required to be determined upon the record after hearing or opportunity for hearing will be placed upon the hearing calendar. Proceedings pending upon this calendar will be their order of assignment, so far as practicable, be heard at the times and places fixed by the commission or presiding officer, giving due regard to the convenience and necessity of the parties or their attorneys. The commission in its discretion with or without motion, for cause may at any time with due notice to the participants advance or postpone any proceeding on the hearing calendar. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-7. Pre-hearing conferences. (a) Generally. Conferences to adjust, settle or expedite proceedings. In order to provide opportunity for submission and consideration of facts, arguments, offers of settlement, or any of the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hear-

ings before the presiding officer as time, the nature of the proceeding, and the public interest may permit.

(b) Conferences to expedite hearing. At any pre-hearing or other conferences which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement or proposals of adjustment, the possibility of the following: (1) The simplification of the issues.

(2) The exchange and acceptance of service of exhibits proposed to be offered into evidence.

(3) The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(4) The limitation of the number of witnesses.

(5) The discovery or production of evidence.

(6) Such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(c) Initiation of conferences. (1) The commission or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the parties to the proceeding, the staff of the commission and staff counsel to appear thereat to consider any or all of the matters enumerated in K.A.R. 21-45-7 (b) (relating to conferences to expedite hearings). Due notice of the time and place of such conference shall be given to all parties to the proceeding, the staff of the commission and staff counsel.

(2) All parties will be expected to come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a participant to attend such conference, after being served with due notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

(d) Authority of presiding officer at conference. The presiding officer at any conference may dispose of by ruling, irrespective of the consent of

the participants, any procedural matters which he is authorized to rule upon during the course of the proceeding, and which it appears may appropriately and usefully be disposed of at that stage. In addition, where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer at his discretion and with due regard for the convenience and necessity of the parties, the staff of the commission and staff counsel, may direct such advance distribution by a prescribed date. The rulings of the presiding officer made at such conference shall control the subsequent course of the hearing, unless modified for good cause shown.

(e) Offers of settlement. Nothing contained in these rules shall be construed as precluding any participant in a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the commission (or to staff counsel for transmittal to the commission) or from requesting conferences for such purpose.

(f) Refusal to make admissions or stipulate. If a party attending a conference convened pursuant to these rules refused to admit or stipulate the genuineness of any documents or the truth of any matters of fact and if the participant requesting the admissions or stipulations thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the commission or presiding officer for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the commission or presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of not substantial importance, the order shall be made. An appeal may be taken to the commission from any such order made by a presiding officer. If a party refuses to comply with such order after it becomes final, the commission or presiding officer may strike all or any part of such pleadings of such party or limit or deny further participation by such party. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-8. Hearings. (a) Who shall conduct. Hearings and rehearings shall be conducted by the hearing commissioners designated by the chairman, one of whom shall be designated as pre-

siding officer by the chairman; or, at the discretion of the commission, hearings and rehearings may be conducted by a hearing examiner appointed per K.A.R. 21-45-17 who shall be the presiding officer vested with all the powers and duties of a presiding officer according to these rules.

(b) Place. Hearings and rehearings shall be held in the county where respondent is doing business and where the acts complained of occurred at a place designated by the chairman of the commission.

(c) Appearances. The presiding officer before whom the hearing is held shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

(d) Procedure before hearing commissioners. (1) The hearing commissioner(s) shall have full authority to direct the control of the procedure of the hearings and rehearings, by the presiding officer, to admit or exclude testimony or other evidence, and to rule upon all motions and objections.

(2) All rulings and determinations of the hearing commissioner(s) shall be by majority rule.

(3) The hearings commissioners may call and examine witnesses, direct the production of papers or other documents and introduce documentary or other evidence.

(4) Whenever the hearing commissioner(s) cannot arrive at a majority decision for any reason, the chairman may appoint one or more new hearing commissioners who shall review the transcript of proceedings and participate in the proceedings with the same power and authority as if originally appointed as a hearing commissioner.

(e) Order of procedure. (1) In hearings, the complainant, or other party having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding officer. In proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close.

(2) Interveners shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of any original party the presiding officers shall designate at what stage such intervener shall be heard.

(3) In proceedings where the evidence is peculiarly within the knowledge or control of another party or participant, the order of presentation set forth in subsections (1) and (2) of this section may be varied by the presiding officer.

(f) Presentation by the parties. (1) Parties and

staff counsel shall have the right of presentation of evidence, cross-examination, objection and motion. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(2) When objections to the admission or exclusion of evidence before the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and shall not be taken to rulings thereon.

(g) Limiting number of witnesses. The presiding officer may limit appropriately the number of witnesses who may be heard upon any issue.

(h) Additional evidence. At any stage of the hearing the presiding officer may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or at the adjournments thereof. At the hearing, the presiding officer may, if deemed advisable, authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

(i) Oral examination. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(j) Fees of witnesses. Witnesses subpoenaed by the commission shall be paid the same fees and mileage as are paid for like services in the district court. Witnesses subpoenaed at the instance of participants shall be paid the same fees by the participant at whose instance the witnesses are subpoenaed; and the commission before issuing any subpoena as provided in § K.A.R. 21-45-9 (relating to subpoenas), may require a deposit of an amount adequate to cover the fees and mileage involved.

(k) Public hearings and rehearings. Hearings and rehearings shall be public.

(l) Rights of parties. All parties to a hearing or rehearing may call, examine and cross-examine witnesses and introduce papers, documents, or other evidence into the record of the proceedings, subject to the ruling of the presiding officer.

(m) Duties of the hearing commissioners or presiding officer include but are not limited to the following: (1) Administer the oath.

(2) Rule on proof.

(3) Regulate the hearing.

(4) Exclude people from the hearing.

(5) Hold conferences for simplification of issues.

(6) Dispose of procedural requests.

(7) Authorize and set times for filing of briefs.

(8) Grant continuances.

(9) Take any other action consistent with the purpose of the law administered by the commission and consistent with these rules.

(n) Stipulations. Written stipulations may be introduced in evidence, if signed by the persons sought to be bound thereby; or by their attorneys. Oral stipulations may be made on the record at open hearings or rehearings.

(o) Oral arguments and briefs. The presiding officer shall permit the parties to submit oral arguments before them and to file briefs within such time limits as the presiding officer may determine consistent with K.A.R. 21-45-15 regarding briefs.

(p) Waiver of objections. Any objection not duly urged before the presiding officer shall be deemed waived unless the failure or neglect to urge such objection shall be excused for cause by the presiding officer.

(q) Continuances, adjournments and substitutions. The presiding officer may postpone, consistent with commission directives regarding the setting of the matter, a scheduled hearing or continue a hearing from day to day or adjourn it to a later day or to a different place by announcement thereof at the hearing or by appropriate notice to all parties. The commission may, at any time prior to the completion of a hearing, substitute one hearing commissioner or presiding officer for another. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-9. Subpoenas. (a) Issuance. Subpoenas for the attendance of witnesses or for the production of evidence, unless directed by the commission upon its own motion, will issue only upon application in writing to the commission or the presiding officer, except that during sessions of a hearing in a proceeding, such application may be made orally on the record before the presiding officer, who is hereby given authority to issue subpoenas. Such written applications shall specify as nearly as may be the general scope of the testimony or evidence sought, including as to evidence, specification as nearly as may be, of the documents desired. Any commissioner may issue subpoenas.

(b) Service and return. If service of subpoena

is made by a sheriff or like officer or his deputy, such service shall be evidenced by his return thereof. If made by another person, such person shall make affidavit thereof, describing the manner in which service was made, and shall return such affidavit. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned forthwith to the office of the commission, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(c) Fees of witnesses. Witnesses who are subpoenaed may be paid fees as provided by K.A.R. 21-45-8 (j) or as allowed by the state department of administration. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-10. Depositions. (a) Generally. The testimony of any witness may be taken by deposition, upon application by a participant in a proceeding pending before the commission any time before the hearing is closed, upon approval by the commission or the presiding officer.

(b) Notice and application. Unless notice is waived, no deposition shall be taken except after at least ten (10) days' notice when a deposition is to be taken elsewhere. Such notice shall be given in writing by the participant proposing to take such deposition to the other participants and to the commission. In such notice and application to take evidence by deposition, the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason why such deposition should be taken. The other participants may, within the time stated in this section, make any appropriate response to such notice and application.

(c) Authorization of taking deposition. If an application for the taking of a deposition so warrants, the commission or presiding officer will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the partici-

pants an authorization naming the witness whose deposition is to be taken, and the time, place and notarial officer before whom the witness is to testify, but such time, place and notarial officer so specified may or may not be the same as those named in the said notice and application.

(d) Officer before whom deposition is taken. Depositions may be taken before any commissioner, a presiding officer or other authorized representative of the commission, any notary public or any other person authorized to administer oaths not being counsel or attorney for any of the participants, or interested in the proceeding or investigation, according to such designation as may be made in the authorization.

(e) Oath and reduction to writing. Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which he shall testify, before any questions are put or testimony given. The testimony shall be reduced to writing by the notarial officer, or under his direction, after which the deposition shall be subscribed by the witness, unless waived, and certified in the usual form by the notarial officer.

(f) Scope and conduct of examination. Unless otherwise directed in the authorization, the deponent may be examined regarding any matter which may be relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. Participants shall have the right of cross-examination, objection and exception. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition, but he shall not have the power to decide on the competency, materiality or relevancy of evidence. Objections to questions or evidence not taken before the notarial officer shall be deemed waived.

(g) Status of deposition as part of record. No part of a deposition shall constitute a part of the record in the proceeding, unless received in evidence by the commission presiding officer. Objection may be made at the hearing in the proceeding to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

(h) Fees of officers and deponents. Deponents whose depositions are taken and the notarial officers taking such depositions shall be entitled to the same fees as are paid for like services in the district courts, which fees shall be paid by the participant at whose instance the depositions are taken.

(i) Deposition upon written questions. Upon written application requesting deposition by written questions, any commissioner or presiding officer may for good cause permit such a deposition according to such terms and scope as directed by said commissioner or presiding officer. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-11. Interrogatories. Upon written application, any commissioner or presiding officer may, for good cause, permit interrogatories as generally identified in K.S.A. 60-233, but limited to the specific terms and scope as may be directed by said commissioner or presiding officer. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-12. Motions. (a) Scope and contents. After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired, except as may be otherwise expressly provided in these rules. Other motions may be made as provided for elsewhere in these rules. Motions shall set forth the ruling or relief sought, and state the grounds therefor and the authority relied upon.

(b) Presentation. Motions may be made in writing at any time and motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately. Oral motions shall be included in the transcript.

(c) Objections. Any participant shall have ten (10) days within which to answer or object to any motion unless the period of time is otherwise fixed by the commission or the presiding officer.

(d) Action on motions. (1) The presiding officer is authorized to rule upon any motion not formally acted upon by the commissioners except that no motion made before or during a hearing, a ruling upon which would involve or constitute a final determination of the proceeding, shall be

ruled upon by a presiding officer except as a part of his proposed report submitted after the conclusion of the hearing. A presiding officer may refer any motion to the hearing commissioner(s) or commission for ultimate determination. The hearing commissioner(s) or commission will rule upon all other motions and upon such motions as presiding officers may certify to the commission for disposition.

(2) With respect to any motion filed with the commission after a hearing has commenced, or made to a presiding officer after a hearing has commenced and referred to the commission, unless the commission acts within thirty (30) days after such filing or referral, whichever is later, the motion shall be deemed to have been denied. The presiding officer, either by an announcement on the record where the hearing is in session or by written notice if the hearing is in recess, shall notify the parties to the proceeding of the date on which a motion is referred to the commission. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-13. Evidence. (a) Form and admissibility. In any proceeding before the commission or a presiding officer relevant and material evidence shall be admissible, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of any probative value.

(b) Reception and ruling. The presiding officer shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding. The production of further evidence upon any issue may be ordered.

(c) Documents on file with the commission. In case any matter contained in a report or other document on file with the agency is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(d) Public documents. Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the

federal government (including government-owned corporations) and such document (or part thereof) has been shown by the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document item by specifying the document or relevant part thereof without regard to the requirements of K.A.R. 21-45-13 (g).

(e) Written testimony. (1) Direct testimony of any witness may be offered as an exhibit, or as prepared written testimony to be copied into the transcript. Cross examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated if, not less than twenty (20) days prior to such hearing, service thereof is made upon each participant of record, unless the presiding officer for good cause shall otherwise direct.

(2) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the commission or the presiding officer may direct that testimony to be given upon direct examination shall be reduced to exhibit form or to the form of prepared written testimony and be served and offered in the manner provided in subsection (1) of this section. A reasonable period of time shall be allowed for the preparation of such written testimony.

(3) All participants offering prepared written testimony whether in the form of an exhibit, or to be copied into the transcript, shall insert line numbers on each page, in the left-hand margin, unless otherwise directed by the commission or the presiding officer.

(f) Records in other proceedings. When any portion of the record in any other proceeding before the commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of such record shall be presented in the form of an exhibit, together with additional copies as provided in K.A.R. 21-45-13 (g) (relating to copies to parties and commission), unless:

(1) the participant offering such record agrees to supply, within a period of time specified by the commission or the presiding officer, such copies at his own expense, if and when so required; and

(2) the portion is specified with particularity in such manner as to be readily identified, and upon motion is admitted in evidence by reference to the records of the other proceedings.

(g) Copies to parties and the commission. Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, unless otherwise directed by the commission or the presiding officer, copies shall be furnished to the presiding officer and to the participants present at the hearing. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-14. Official notice of facts. Official notice may be taken by the commission or the presiding officer of such matters as might be judicially noticed by the district courts, or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute, or any matters as to which the commission by reason of its functions is an expert. Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-15. Briefs. (a) Proceedings in which briefs are to be filed. At the close of the taking of testimony in each proceeding where briefs are allowed, the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved; and he shall fix the order in which such briefs shall be filed. The first or initial brief shall be filed by the participant or participants upon whom rests the burden of proof, except that the presiding officer, when in his judgment the circumstances or exigencies require, may direct that briefs shall be filed simultaneously. In no proceeding, whether briefs are to be filed simultaneously or otherwise, shall any participant upon whom rests the burden of proof be denied the right to file a reply brief.

(b) Content. Briefs shall contain: (1) A concise statement of the case.

(2) An abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.

(3) Proposed findings and conclusions and, if

desired, a proposed form of order or regulation, together with the reasons and authorities therefore, separately stated.

(c) Form. Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analyses of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than ten (10) pages shall contain on its front leaves a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be as concise as possible.

(d) Filing and service. Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing, except by special permission of the commission or the presiding officer. Except where filing of a different number is permitted or directed by the commission or presiding officer the same number of copies of each brief as is required for other pleadings shall be furnished for the use of the commission. (Authorized by K.S.A. 1972 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-16. Transcript. (a) Recording of proceedings. Hearings shall be stenographically reported by the official reporter of the commission unless reporting is otherwise directed by the commission, and a transcript of such report shall be a part of the record and the sole official transcript of the proceeding. Such transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as is directed on the record by the commission or the presiding officer.

(b) Transcript corrections. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, except as provided in this section. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the commission or the presiding officer, at any time during the hearing or after the close of evidence, as may be permitted by the commission or the presiding officer before the filing of his proposed report, but not less than ten (10) days in advance of the time fixed for filing final briefs. The commission or the pre-

siding officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

(c) Copies. The commission will cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies may obtain them from the official reporter upon payment of the reporter's fees. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-17. Presiding officers. (a) Designation of presiding officers. Either the chairman or, when duly designated for that purpose, one of the hearing commissioners, or a hearing examiner, or other duly appointed representative may preside at a hearing or otherwise, as the presiding officer.

(b) Hearing examiner qualification. Qualifications for the hearing examiner shall be that the person is a qualified attorney to practice law in the state of Kansas, that the person has practiced law for a minimum of three (3) years and that the person be familiar with the rules of the commission.

(c) Presiding officer disqualification. A presiding officer may withdraw from a proceeding when the presiding officer deems itself disqualified, or the presiding officer may be withdrawn by the chairman for good cause after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the chairman or other hearing commissioner to whom the chairman has delegated the matter.

(d) Authority of presiding officers. Presiding officers duly designated by the commission to preside at hearings shall have the authority, within the powers and subject to the regulations of the commission, as follows: (1) To regulate and control the course of hearings, subject to the approval of the commission, and the recessing, reconvening, and the adjournment thereof.

(2) To administer oaths and affirmations.

(3) To issue subpoenas.

(4) To rule upon offers of proof and receive evidence.

(5) To take or cause depositions to be taken.

(6) To allow interrogatories.

(7) To hold appropriate conferences before or during hearings.

(8) To dispose of procedural matters but not,

before their proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings.

(9) Within their discretion, or upon direction of the commission, to certify any question to the commission for consideration and disposition.

(10) To submit their proposed reports in accordance with K.A.R. 21-45-18 (relating to proceedings in which proposed reports are prepared).

(11) Hold conferences for the settlement or simplification of the issues or for the obtaining of mutually satisfactory stipulations as to facts or proof, by consent of the parties, as authorized by established procedure.

(12) Grant adjournments at the request of parties or representatives or on their own motion.

(13) Interrogate witnesses and parties as the case requires.

(14) Direct parties to appear at hearings.

(15) Consider and evaluate the facts and evidence on the record, as well as arguments and contentions made.

(16) Determine credibility and the weight of evidence in making findings of fact and conclusions of law or opinion and their reasons.

(17) Make a complete record of the proceeding and to include therein all relevant and material matters, including exhibits, necessary for a review on appeal.

(18) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the agency functions and with the regulations and policies of the agency.

(e) Restrictions on duties and activities. Save to the extent required for the disposition of ex parte matters as authorized by law and by the regulations of the agency, no presiding officer shall, in any proceeding which the commission has directed be conducted pursuant to this subsection, consult any person or party on any fact in issue unless upon notice and opportunity for all participants to participate.

(f) Appeals to commission from rulings. (1) During hearing or conference. Rulings of presiding officers may not be appealed from during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instance the matter shall be referred forthwith by the presiding officer to the commission for determination.

(2) Offers of proof. Any offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-18. Proposed reports. (a) Generally. At the close of the evidence, the presiding officer shall allow briefs and hold such oral argument as he deems necessary, review the record in light of the applicable law, and prepare, certify and file with the office of the agency: (1) A proposed report.

(2) A copy of the record of the hearing.

(3) The briefs, if any, filed in the proceeding.

(b) Unavailability of presiding officer. If a presiding officer becomes unavailable, the commission will either designate another presiding officer to prepare a proposed report or will cause the record to be certified to the commission for decision, as may be deemed appropriate, giving notice to the parties.

(c) Proposals by the parties. There may be presented by the parties, as directed by the presiding officer, proposed findings and conclusions and, if desired, the reasons therefor, and such proposed forms of order or regulation as may be deemed requisite in view of the facts, the law and the public interest.

(d) Contents of proposed reports. All proposed reports by presiding officers shall include a statement of: (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and

(2) the appropriate regulation, order, sanction, relief, or denial thereof.

(e) Proposed report a part of the record. All proposed reports shall become a part of the formal record.

(f) Service of proposed reports. All proposed reports shall be filed with the office of the commission, which shall serve copies thereof upon all parties and staff counsel of record. (Authorized by

K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-19 and 21-45-20. (Authorized by K.S.A. 1977 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked May 1, 1978.)

21-45-21. Content of orders. (a) An unlawful practice. If a proposed or final report finds that a respondent has engaged in any unlawful practice, the proposed or final order based on such report may include, where appropriate, but is not limited to the following: (1) Cease and desist: Directing the respondent to cease and desist from such unlawful practice; and

(2) Affirmative action: Requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, maintenance and operation of an affirmative action file per K.A.R. 21-30-18, restoration to membership in any respondent labor organization, admission to or participation in a guidance program apprenticeship training program, on-the-job training program or other occupational training or retraining program, and the extensions of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as will effectuate the purpose of the law; and

(3) Compensation damages: Awarding of compensatory damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

(4) Punitive damages: Awarding of punitive damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

(5) Compliance report: Including a requirement for report of the manner of compliance.

(b) No violation. If a proposed or final report finds the respondent has not engaged in any unlawful practice, the report shall state the finding of the fact and shall issue an order based on such findings dismissing the complaint as to such respondent. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-22. Final report and order. (a) Generally. All reports and orders of the commission shall be final orders (subject only to application for rehearing), except proposed regulations that may be issued in rulemaking. Final orders shall include determination by the commission

upon appeal of proposed reports or upon review initiated by the commission within ten (10) days next following the expiration of the time for filing exceptions under such section, or such other time as the commission may fix in specific cases.

(b) No rehearing. No application for rehearing will be entertained by the commission until an adjudication is issued and becomes a final order under the provisions of this section.

(c) Content. An order of the commission issued after a hearing shall set forth the findings and conclusions of the commission and an opinion containing the reasons for said decision.

(d) Copies. Copies of orders shall be delivered in all cases by the commission in accordance with the provisions of K.S.A. 44-1005, and also to every other party as otherwise required by these rules.

(e) Notice. Copies of orders shall be accompanied by a notice of the statutory right to apply for a rehearing.

(f) Change. When the commission upholds, abrogates, changes, or modifies an original order after a rehearing, it shall so notify in writing the party making application for the rehearing and all other persons furnished with a copy of the original order in accordance with the provisions of subsection (d) of this rule, K.A.R. 21-45-22 (d). Such notice shall be accompanied by a notice of the statutory right to judicial review.

(g) Filing. Filing of orders rendered after a hearing, as well as all abrogations, changes or modifications thereof as the result of a rehearing, shall be at the office of the commission and shall be open to public inspection during regular office hours of the commission.

(h) Final adjudication. A complaint shall be deemed finally adjudicated: (1) When a respondent is notified in writing by the commission that it is closing a case for whatever reason; or

(2) When an order issued by the commission after a hearing or rehearing becomes final. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-23. Record of the proceedings. The written record of the proceedings before the commission for appeal or other public purposes shall include the formal record. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-24. Rehearing. (a) Form, filing and service. An application for rehearing shall be filed

with the commission at its office in Topeka within ten (10) days after the issuance of any adjudication or other final order by the agency. Such application shall be made by petition, stating specifically the grounds relied on. A copy of such application shall be served on all other persons receiving a copy of the original order in conformity with the service provisions of these rules, by the party making such application.

(b) Content of application for rehearing. Every application for rehearing shall contain, other than the information required by K.S.A. 44-1010, the following: (1) The docket number of the case for which such application is being made.

(2) The name of the party making such application, together with such other identifying information as is otherwise required for any appearance or submittal by these rules.

(3) The name and address of each person served with a copy of such application in conformity with the service provisions of these rules.

(4) Such petitions shall state concisely and specifically alleged errors in the adjudication or other order of the commission. If an adjudication or other order of the agency is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(c) Manner of filing and serving applications for rehearing. Applications for rehearing shall be filed and served by personal delivery or by certified mail, return receipt requested.

(d) Date of application for rehearing. The date an application for rehearing is filed shall be the date it is delivered to the commission's office in Topeka, whether by personal delivery or by mail.

(e) Granting an application for rehearing. When the commission grants an application for rehearing, it shall so notify the parties in writing.

(f) Date of granting of application for rehearing. The date an application for rehearing is granted shall be the date on which the commission makes such decision.

(g) Other procedural rules. The rehearing shall follow the same procedural rules as a hearing, except to the extent otherwise directed by the commission or a presiding officer.

(h) Effect of failure to allege specific error. Failure to request a rehearing on specific allegation of error and provide the reasons therefore

shall constitute a waiver of all objection to any matters not specifically alleged as error. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-45-25. Reopening of the record. (a) Petition to reopen. At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, any participant with notice to all participants in the proceeding may file with the presiding officer, if before issuance by the presiding officer of a proposed report, otherwise with the commission a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) Responses. Within ten (10) days following the service of such petition, any other participant may file with the presiding officer or the commission, the participant's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

(c) Action on petition. As soon as practicable after the filing of responses to such petitions or default thereof, the presiding officer or commission will grant or deny such petition.

(d) Reopening by presiding officer. At any time prior to the filing of the proposed report a presiding officer, after notice to the participants, may reopen the proceeding for the reception of further evidence on the presiding officer's own motion, if the presiding officer has reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

(e) Reopening by the commission. At any time the commission, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the commission has reason to believe that conditions of fact or law have so changed as to require or that the public interest requires the reopening of such proceeding. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 46.—MISCELLANEOUS SUBSTANTIVE PROVISIONS

21-46-1. Class B private clubs. All clubs holding licenses from the alcoholic beverage con-

trol commission as class B clubs are deemed places of public accommodations and subject to the provision of the Kansas act against discrimination. Nothing in the present paragraph shall be construed as grounds for an automatic exemption of any club holding a license from the alcoholic beverage control commission as a class A club from the provisions of the Kansas act against discrimination. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-46-2. Nonprofit fraternal or social associations or corporations. An association or corporation shall be deemed exempt from coverage by the Kansas act against discrimination as a nonprofit fraternal or social association or corporation only if it meets all the following requirements: (a) Requirements. (1) It is organized in good faith for social or fraternal purposes;

(2) Membership entails the payment of bona fide initiation fees or regular dues;

(3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership.

(4) There is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates.

(5) It is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

(b) Investigations. The commission shall conduct an investigation of any proposed exemption from the act per K.A.R. 21-46-2 (a). (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-46-3. Student admissions to schools. Student admissions to schools are covered by the provisions of the Kansas act against discrimination. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Articles 47 to 49.—RESERVED

Article 50.—CONTRACT COMPLIANCE

21-50-1. Applicability. This article shall apply to every contractor covered by K.S.A. 1977 Supp. 44-1030 and K.S.A. 1977 Supp. 44-1031.

(Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-2. Definitions. The following words and terms when used in this article shall have the following meanings:

(a) "Contract" means any agreement, purchase order or arrangement or modification thereof between the state or any political sub-division of the state and any person to be paid in whole or in part, directly or indirectly, by public funds or in-kind contributions.

(b) "Contracting agency" or "agency" means any department, agency, commission, authority, establishment or other instrumentality of the state or any political sub-division of the state, which enters into contracts.

(c) "Contractor" means any contractor, supplier, vendor or other person who, through a contract or other arrangement, has received, is to receive or is receiving public funds or in-kind contributions from the contracting agency, and shall include any sub-contractor who performs under a contract covered under K.S.A. 44-1030 and K.S.A. 44-1031. Contractors, whether corporate or natural persons, are designated in this article by use of the third person neuter pronouns.

(d) "Classification" means one or more groups of jobs having similar content, wage rates and opportunities. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-3. Compliance review. (a) In determining whether a contractor is in compliance with the Kansas act against discrimination, the contract compliance review may consider, but shall not be limited to, the following evidentiary factors, except that a finding adverse to the contractor as to any one of the following factors will not alone constitute conclusive proof of noncompliance:

1. The ratio of minorities and females in the area in which the contractor operates as compared to the ratio of minority and female employees in the contractor's workforce.

2. The availability of promotable and transferable minorities and women within the contractor's employment.

3. The existence of local training institutions capable of training persons in the requisite skills.

4. The degree of training which the contractor is reasonably able to undertake as a means of making all job classifications available to otherwise qualified minorities and women.

5. The evidence that the contractor has furnished each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding and every other source of recruitment regularly utilized a notice advising of its commitment to non-discrimination pursuant to regulation 21-50-7, as amended.

(b) Notifying contractor. After review, the commission shall notify the contractor whether or not there is evidence of noncompliance with the Kansas act against discrimination. Where evidence of non-compliance is found to exist as a result of contract compliance review, reasonable efforts shall be made through negotiation and persuasion to secure written commitments to eliminate such problem areas. Written commitments may include the preparation and implementation of an affirmative action program as described below and/or the precise action to be taken and dates for completion. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-4. Affirmative action program. Affirmative action programs may contain, but are not limited to:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification, development of goals to remedy such problems, including timetables for completion.

(e) Development and execution of action oriented programs designed to attain specific goals and objectives.

(f) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(g) Compliance of personnel policies and practices with the regulations of the commission.

(h) Solicitation of the support and cooperation of the local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and females.

(i) Consideration of minorities and females not currently in the labor market having requisite

skills who can be recruited through affirmative action measures.

(j) Consideration of the anticipated expansion and turnover of and in the contractor's workforce as one of the bases for development of goals and timetables. Supporting data and the analysis thereof on which goals and timetables are based may be part of the contractor's written affirmative action program. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-5. Duties of contracting agency. It shall be the duty of the contracting agency upon request of the commission to furnish the commission with a listing as to the identity of the contractors whenever the contracts with any contractor exceed \$5,000 cumulatively in a fiscal year. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-6. Exemptions. Contractor obligations shall be limited to the contractor's facilities within Kansas. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-7. Contractor's obligations. (a) Recruiting. The contractor at least once during the life of the agreement, contract or understanding shall send each labor union or workers' representative with which it has or is entering into a collective bargaining agreement or other contract or understanding, a written notice advising said labor union or workers' representative that the contractor is an equal opportunity employer. Similar notice shall be sent to every other source of recruitment regularly utilized by the contractor.

(b) Contractors. Contractors shall not discriminatorily exclude minority and female contractors from those from whom bids are solicited. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

Articles 51 to 59.—RESERVED

Article 60.—DISCRIMINATORY HOUSING PRACTICES

21-60-1. Definitions. (a) "Broker" or "Agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts as well as the administration of matters regarding such offers, solicitations or contracts, or any other real estate related transactions.

(b) "Dwelling" means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families as well as any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(c) "Person in the business of selling or renting" means any person who:

(1) within the preceding twelve months, has participated as principal in more than three transactions involving the sale or rental of any dwelling or any interest therein;

(2) within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-2. Discriminatory housing practices on the basis of familial status. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-3. Unlawful refusal to sell or rent or to negotiate for the sale or rental. Unlawful practices under K.S.A. 44-1016(a) include, but are not limited to:

(a) Failing to accept or consider a bona fide offer because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Refusing to sell or rent real property to, or to negotiate for the sale or rental of real property with, any person because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Imposing different sales prices or rental charges for the sale or rental of real property upon any person because of race, religion, color, sex,

disability, familial status, national origin or ancestry;

(d) Using different qualification criteria or applications, or sale or rental standards or procedures such as income standards, application requirements, application fees, credit analysis, sale or rental approval procedures or other requirements because of race, religion, color, sex, disability, familial status, national origin or ancestry; or

(e) Evicting tenants because of their race, religion, color, sex, disability, familial status, national origin or ancestry, or because of the race, religion, color, sex, disability, familial status, national origin or ancestry of a tenant's guest. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-4. Discrimination in terms, conditions and privileges and in services and facilities. Unlawful practices under K.S.A. 44-1016(b) include, but are not limited to:

(a) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, down payment and closing requirements, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Failing to perform or delaying maintenance or repairs of sale or rental real property because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Failing to process or accurately communicate an offer for the sale or rental of real property because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(d) Limiting the use of privileges, services or facilities associated with real property because of race, religion, color, sex, disability, familial status, national origin or ancestry of an owner, tenant or a person associated with him or her; and

(e) Denying or limiting services or facilities in connection with the sale or rental of real property because a person failed or refused to provide sexual favors. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-5. Other prohibited sale and rental conduct. (a) It shall be unlawful because of race, religion, color, sex, disability, familial

status, national origin or ancestry for an agent, broker, person in the business of selling or renting or any other person for profit to restrict or attempt to restrict, by word or conduct, the choices of a person seeking, negotiating for, buying or renting real property so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful because of race, religion, color, sex, disability, familial status, national origin or ancestry to engage in any conduct relating to the provision of housing or of related services and facilities that otherwise makes unavailable or denies real property to persons.

(c) Prohibited actions under subsection (a), generally referred to as unlawful steering practices, include, but are not limited to:

(1) discouraging any person from inspecting, purchasing or renting real property because of race, religion, color, sex, disability, familial status, national origin or ancestry, or because of the race, religion, color, sex, disability, familial status, national origin or ancestry of persons in a community, neighborhood or development;

(2) discouraging the purchase or rental of real property because of race, religion, color, sex, disability, familial status, national origin or ancestry, by exaggerating drawbacks or failing to inform any person of desirable features of real property or of a community, neighborhood, or development;

(3) communicating to any prospective purchaser or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(4) assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(d) Prohibited sales and rental activities under subsection (b) include, but are not limited to:

(1) discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice;

(2) employing codes or other devices to segregate or reject applicants, purchasers or renters;

(3) refusing to take or to show listings of real property in certain areas because of race, religion,

color, sex, disability, familial status, national origin or ancestry;

(4) denying or delaying the processing of an application made by a purchaser or renter, or refusing to approve such a person for occupancy in a cooperative or condominium because of race, color, sex, disability, familial status, national origin or ancestry; and

(5) refusing to provide municipal services or property hazard insurance for real property, or providing such services or insurance differently because of race, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-6. Discriminatory advertisements, statements and notices. (a) Unlawful practices under K.S.A. 44-1016(c) include, but are not limited to, all written or oral notices or statements by a person engaged in the sale or rental of real property. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any document used with respect to the sale or rental of real property.

(b) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(2) expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(3) selecting media or locations for advertising the sale or rental of real property in order to deny particular segments of the housing market information about housing opportunities because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(4) refusing to publish advertising for the sale or rental of real property or requiring different charges or terms for such advertising because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991

Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-7. Discriminatory representations on the availability of real property. (a)

It shall be unlawful, because of race, religion, color, sex, disability, familial status, national origin or ancestry, for a broker, agent, person in the business of selling or renting or other person for profit to provide inaccurate or untrue information about the availability of real property for sale or rental.

(b) Prohibited actions under this act include, but are not limited to:

(1) indicating through words or conduct that real property which is available for inspection, sale, or rental has been sold or rented, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(2) representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of real property to persons because of race, religion, color, sex, disability, familial status, national origin or ancestry preclude the sale or rental of real property to a person;

(3) enforcing covenants or other deed, trust or lease provisions in order to preclude the sale or rental of real property to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(4) limiting information, by word or conduct, regarding suitably priced real property available for inspection, sale or rental, because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(5) providing false or inaccurate information regarding the availability of real property for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-8. Blockbusting. (a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, familial status, national origin or ancestry or with a disability.

(b) In establishing a discriminatory housing practice under this act it is not necessary that there was in fact profit, as long as profit was a motive for engaging in the blockbusting activity.

(c) Prohibited actions under this act include, but are not limited to:

(1) engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, religion, color, sex, disability, familial status, national origin or ancestry of persons residing in it, in order to encourage the person to offer real property for sale or rental; and

(2) encouraging, for profit, any person to sell or rent a real property through assertions that the entry or prospective entry of persons of a particular race, religion, color, sex, familial status, national origin or ancestry or with disabilities, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-9. Discrimination in the provision of brokerage services. Unlawful practices under K.S.A. 44-1016(f) include, but are not limited to:

(a) Setting different fees for access to or membership in a multiple listing service based on race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Imposing different standards or criteria for membership in real estate sales or rental organization based on race, religion, color, sex, disability, familial status, national origin or ancestry; and

(d) Establishing geographic boundaries, office location or residence requirements for 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 because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Author-

ized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-10. Discrimination in the making of loans and in the provision of other financial assistance. Unlawful practices under K.S.A. 44-1017(a) include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-11. Discrimination in the purchasing of loans. (a) It shall be unlawful for any person or entity engaged in purchasing loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) Unlawful practices under this act include, but are not limited to:

(1) purchasing loans or other debts or securities which relate to or are secured by real property in certain communities or neighborhoods, but not in others, because of the race, religion, color, sex, disability, familial status, national origin or ancestry of one or more persons in such neighborhoods or communities;

(2) pooling or packaging loans or other debts or securities which relate to or which are secured by real property in a different manner because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to or which are secured by

real property because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(c) Any person or entity engaged in the purchasing of loans may consider factors justified by business necessity, including requirements of federal law, and factors relating to a transaction's financial security or to protection against default or reduction of the value of the security. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-12. Discrimination in the terms and conditions for making available loans or other financial assistance. (a) It shall be unlawful for any person or entity engaged in making loans or providing other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or in making loans which are secured by residential real estate, to impose different terms or conditions for the availability of such loans or other financial assistance because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) Unlawful practices under this act include, but are not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining the creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling, or for any loan or other financial assistance which is secured by residential real estate, because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling, or for any loan or other financial assistance which is secured by residential real estate, because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-13. Unlawful practices in the selling, brokering, or appraising of residential real property. (a) It shall be unlawful for any

person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) For the purpose of this act, the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling, or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Practices which are unlawful under this act include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-14. Prohibitions against discrimination because of disability; definitions. (a) "Accessible," when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of K.S.A. 1991 Supp. 44-1016(h)(4) or a comparable standard, is "accessible" within the meaning of this act.

(b) "Accessible route," when used with respect to the public and common areas of a building containing covered multifamily dwellings, means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also

safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of K.S.A. 1991 Supp. 44-1016(h)(4) is an "accessible route."

(c) "Building" means a structure, facility or the portion thereof that contains or serves one or more dwelling units.

(d) "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route within the boundary of the site to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with the appropriate requirements of K.S.A. 1991 Supp. 44-1016(h)(4) or a comparable standard complies with the requirements of this act.

(e) "Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

(f) "Controlled substance" means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 USC 802 1970).

(g) "Dwelling unit" means a single unit of residence for a family or one or more persons, including but not limited to, a single family home and an apartment unit within an apartment building. The term dwelling unit also includes other types of dwellings in which sleeping accommodations are provided but in which toilet or cooking facilities are shared by occupants of more than one room or portion of the dwelling, including, but not limited to, dormitory rooms, sleeping rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(h) "Entrance" means any access point to a building used by residents for the purpose of entering.

(i) "Exterior" means all areas of the premises outside of an individual dwelling unit.

(j) "First occupancy" means a building that has never before been used for any purpose.

(k) "Ground floor" means a floor of a building

with a building entrance on an accessible route. A building may have more than one ground floor.

(l) "Interior" means the spaces, parts, components or elements inside of an individual dwelling unit.

(m) "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

(n) "Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

(o) "Public use areas" means rooms or spaces of a building that are made available to the general public. Public use areas may be provided at a building that is privately or publicly owned.

(p) "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-15. Permissible inquiries under K.S.A. 44-1016(h). K.S.A. 44-1016(h) does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:

(a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;

(c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with a particular type of disability;

(d) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; and

(e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-16. Reasonable modifications of existing premises. (a) It shall be unlawful for any person to refuse to permit, at the expense of a disabled person, reasonable modifications of ex-

isting premises occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling.

(b) In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(c) The landlord may not increase for disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(d) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-17. Design and construction requirements. (a) On or after July 1, 1992, covered multifamily residential real property designed and constructed for first occupancy after January 1, 1992 shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this paragraph, covered multifamily residential real property shall be deemed to be designed and constructed for first occupancy on or before January 1, 1992, if the covered multifamily residential real property is occupied by that date or if the last building permit or renewal thereof for the covered multifamily residential real property is issued by a State, county or local government on or before January 1, 1992. The burden of establishing impracticality because of terrain or unusual site characteristics

is on the person or persons who designed or constructed the housing facility.

(b) Compliance with a duly enacted law of the State of Kansas or unit of local government that includes the requirements of paragraph (h) of K.S.A. 44-1016 satisfies the requirements of this act.

(c) The State of Kansas or unit of general local government may review and approve newly constructed multifamily residential real property for the purpose of making determinations as to whether the requirements of paragraph (h) of K.S.A. 44-1016 are met.

(d) Determinations of compliance or noncompliance by the State of Kansas or a unit of general local government under paragraph (c) are not conclusive in proceedings under this act. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, § 1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-18. State and federal elderly housing programs. The provisions regarding familial status in this act shall not apply to housing provided under any Federal or State program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-19. 62 or over housing. The provisions regarding familial status in this act shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this act even though:

(a) There are persons residing in such housing on January 1, 1992, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(b) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;

(c) There are units occupied by employees of the housing units (and family members residing in the same unit) who are under 62 years of age, provided, they perform substantial duties directly related to the management or maintenance of the

housing. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-20. 55 or over housing. (a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the requirements of subparagraphs (b)(1) or (b)(2) and the requirements of subsection (c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" means, but is not limited to:

- (A) social and recreational programs;
- (B) continuing education;
- (C) information and counseling;
- (D) recreational, homemaker, outside maintenance and referral services;
- (E) an accessible physical environment;
- (F) emergency and preventive health care or programs;
- (G) congregate dining facilities;
- (H) transportation to facilitate access to social services; and

(I) services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical and social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this subparagraph (b)(2), the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed or desired housing. The following factors, among others, are relevant in meeting the requirements of subparagraph (b)(2):

(A) whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed by the owner or a

contractual third party to meet the physical or social needs of older persons. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

(B) the amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

(C) the income range of the residents of the housing facility;

(D) the demand for housing for older persons in the relevant geographic area;

(E) the range of housing choices for older persons within the relevant geographic area;

(F) the availability of other similarly priced housing for older persons in the relevant geographic area; and

(G) the vacancy rate of the housing facility.

(3) If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this subsection (2).

(c)(1) On and after July 1, 1992, at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility designed and constructed for first occupancy after January 1, 1992, need not comply with this subsection (c)(1) until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(A) the manner in which the housing facility is described to prospective residents;

(B) the nature of any advertising designed to attract prospective residents;

(C) age verification procedures;

(D) lease provisions;

(E) written rules and regulations; and

(F) actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(3) Effective July 1, 1992, housing satisfies the requirements of this section even though:

(A) On January 1, 1992, under 80% of the occupied units in the housing facility are occupied

by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after January 1, 1992 are occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over; or

(C) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §2 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-21. Prohibited interference, coercion or intimidation. Conduct made unlawful under K.S.A. 1991 Supp. 44-1027 includes, but is not limited to, the following:

(a) Coercing a person either orally, in writing or by other means to deny or limit the benefits provided a person in connection with the sale or rental of real property, or in connection with a residential real estate-related transaction, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Threatening, intimidating or interfering with persons in their enjoyment of real property because of the race, religion, color, sex, disability, familial status, national origin or ancestry of such persons, or of visitors or associates of such persons;

(c) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of real property or seeking access to any residential real estate-related transaction, because of the race, religion, color, sex, disability, familial status, national origin or ancestry of that person or of any person associated with that person;

(d) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or to encourage such other persons to exercise, rights granted or protected by this act; and

(e) Retaliating against any person because that person has made a complaint, testified, assisted,

or participated in any manner in a proceeding under the act. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1027, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-22. Complaints alleging unlawful housing practices. (a) The procedures under this act for investigation and conciliation of complaints will be conducted in accordance with K.A.R. Sections 21-41, 21-42 and 21-43 to the extent these procedures are in compliance with K.S.A. 1991 Supp. 44-1019 and 44-1020. Unless referred to an appropriate local agency pursuant to K.S.A. 1991 Supp. 44-1019(c), the Commission shall commence investigation of the allegations of the complaint within 30 days after receipt of the complaint.

(b) Hearings shall be conducted in accordance with the provisions of the Kansas Administrative Procedure act and K.A.R. Section 21-45. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1019, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-23. Conciliation and conciliation agreements. (a) During the period beginning with the filing of the complaint and ending with either the serving of a notice of hearing under the provisions of K.S.A. 1991 Supp. 44-1019 or the dismissal of the complaint by the Commission, the Commission shall, to the extent feasible, attempt to conciliate the complaint.

(b) Where the aggrieved person has commenced a civil action under an act of Congress or a State law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the Commission shall terminate conciliation unless the court specifically requests assistance from the Commission.

(c) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Commission determines that disclosure of a conciliation agreement is not required. The Commission may make public tabulated descriptions of the results of all conciliation efforts. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1019, as amended by 1992 H.B. 3164, §1 and

6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

Articles 61 to 69.—RESERVED

Article 70.—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS

21-70-1. Definitions. (a) “Current illegal use of drugs” means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s use is current or that continuing use is a real and ongoing problem.

(b) “Professional office of health care provider” means a location where a person or entity regulated by the State of Kansas to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the “professional office of a health care provider” shall only include floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(c) “Public transportation facility” means transportation by bus, rail, aircraft, or any other conveyance that provides the general public with general or special services, including charter services, on a regular and continuing basis.

(d) “Qualified interpreter” means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

(e) “Service animal” means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

(f) “Shopping center or shopping mall” means:

(1) a building housing five or more places of public accommodation; or

(2) a series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more places of public accommodation. The facility housing a “shopping center or shopping mall” only includes floor levels housing at least one place of public accommodation, or any floor level

designed or intended for use by at least one place of public accommodation.

(g) As used in these regulations, “the act” means the Kansas act against discrimination, K.S.A. 44-1001 et seq., as amended. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-2. Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation shall be considered public accommodations subject to the act. As between the parties, allocation of responsibility for complying with the obligations of the act may be determined by lease or contract. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-3. Activities; denial of participation. (a) Denial of participation. A public accommodation shall not deny an individual or class of individuals the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of that place on the basis of a disability or disabilities of the individual or class, either directly or through contractual, licensing or other arrangements.

(b) Participation in unequal benefit. A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of the individual or class, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation in a manner that is not equal to that afforded to other individuals directly, or through contractual, licensing, or other arrangements.

(c) Separate benefit. Unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others, a public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of the individual or class, with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, directly, or through contractual, licensing, or other arrangements.

(d) Individual or class of individuals. For purposes of subsections (a) through (c) of this regulation, the term “individual or class of individuals” means the clients or customers of the public ac-

commodation that enter into the contractual, licensing, or other arrangement. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-4. Integrated settings. (a) Each public accommodation shall afford goods, services, facilities and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) Notwithstanding the existence of separate or different programs or activities provided in accordance with the act, a public accommodation shall not deny an individual with a disability the opportunity to participate in regular programs or activities.

(c) (1) Nothing in this regulation shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under the act that the individual chooses not to accept.

(2) Nothing in the act shall authorize a representative or guardian of an individual with a disability to decline food, water, or medical treatment and services for that individual. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-5. Administrative methods. A public accommodation shall not, either directly or through contractual or other arrangements, utilize standards, criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination by others who are subject to common administrative control. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-6. Association. A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-7. Retaliation or coercion. A public accommodation shall not discriminate against any individual because that individual has opposed any act or practice made unlawful by the act, or because that individual made a complaint, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-8. Places of public accommodation located in private residences. (a) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence shall not be covered by the act. However, that portion used exclusively in the operation of the place of public accommodation, or that portion used both for the place of public accommodation and for residential purposes, shall be covered by the act and these regulations.

(b) The portion of the residence covered under subsection (a) of this regulation extends to those elements used to enter the place of public accommodation, including:

(1) the homeowner's front sidewalk, if any;

(2) the door or entryway;

(3) the hallways; and

(4) those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms. (Authorized by K.S.A. 44-1004; implementing K.S.A. 1992 Supp. 44-1009; effective Dec. 19, 1994.)

21-70-9. Direct threat. (a) The act and these regulations shall not be interpreted to require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities and accommodations of that public accommodation when that individual poses a direct threat to the health and safety of others.

(b) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation shall make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(1) the nature, duration, and severity of the risk;

(2) the probability that the potential injury will actually occur; and

(3) whether reasonable modifications of policies, practices, or procedures will mitigate the risk. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-10. Maintenance of accessible features. (a) A public accommodation shall maintain, in operable working condition, those features of facilities and equipment that are required by the act and these regulations to be readily accessible to and usable by persons with disabilities.

(b) These regulations do not prohibit isolated or temporary interruption in service or access due to maintenance or repairs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-11. Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements shall be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-12. Charges. A public accommodation shall not impose a surcharge on an individual with a disability to cover the costs of measures that are required to provide that individual with the nondiscriminatory treatment required by the act or these regulations, including the provision of auxiliary aids, barrier alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-13. Modifications in policies, practices, or procedures. (a) Each public accommodation shall make reasonable modifications in policies, practices or procedures, when the modifications are necessary to afford goods, services, facilities or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities or accommodations.

(b) Any public accommodation may refer an individual with a disability to another public accommodation if:

(1) that individual is seeking or requires treatment which is not within the referring public accommodation's area of specialization; and

(2) in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. (Authorized by K.S.A. 44-1004; im-

plementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-14. Service animals. (a) Each public accommodation shall modify policies, practices or procedures as necessary to permit the use of a service animal by an individual with a disability.

(b) Nothing in the act or these regulations requires a public accommodation to supervise or care for a service animal. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-15. Undue burden: definition and determination. (a) "Undue burden" means significant difficulty or expense.

(b) In determining whether an action would result in an undue burden, factors to be considered shall include:

(1) the nature and cost of the action needed under the act;

(2) the overall financial resources of the site or sites involved in the action considering:

(A) the number of persons employed at the site;

(B) the effect on expenses and resources;

(C) legitimate safety requirements that are necessary for safe operation, including crime prevention measures; and

(D) how the action would otherwise impact the operation of the site; and

(3) whether the site or sites in question have a parent corporation or entity, and if so:

(A) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to the parent corporation or entity;

(B) the overall financial resources of any parent corporation or entity;

(C) the overall size of the parent corporation or entity with respect to the number of its employees;

(D) the number, type, and location of the parent corporation's or entity's facilities; and

(E) the type of operation or operations of any parent corporation, including the composition, structure, and functions of its workforce. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-16. Auxiliary aids and services. (a) Each public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied, segregated or

otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities or accommodations being offered or would result in an undue burden.

(b) The term “auxiliary aids and services” shall include:

(1) qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making aurally-delivered materials available to individuals with hearing impairments;

(2) qualified readers, taped texts, audio recordings, Brailled materials, large print materials or other effective methods of making visually-delivered materials available to individuals with visual impairments;

(3) acquisition or modification of equipment or devices; and

(4) other similar services and actions.

(c) Each public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-17. Auxiliary aids and services; telecommunication devices for the deaf (TDD’s). (a) Each public accommodation that offers a customer, client, patient or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(b) The act and these regulations do not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-18. Auxiliary aids and services; closed caption decoders. Each lodging establishment that provides televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a

means for decoding captions for use by an individual with impaired hearing. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-19. Alternatives to auxiliary aids and services. (a) If provision of a particular aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities or accommodations being offered, or is an undue burden, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or undue burden.

(b) The alternative auxiliary aid or service, to the maximum extent possible, shall ensure that individuals with disabilities receive the goods, services, facilities or accommodations offered by the public accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-20. Definition of readily achievable; determination. (a) “Readily achievable” means easily accomplished and able to be carried out without much difficulty or expense.

(b) In determining whether an action is readily achievable, factors to be considered shall include:

(1) The nature and cost of the action needed under the act;

(2) the overall financial resources of the site or sites involved in the action, considering:

(A) the number of persons employed at the site;

(B) the effect on expenses and resources;

(C) legitimate safety requirements that are necessary for safe operation, including crime prevention measures; and

(D) how the action would otherwise impact the operation of the site; and

(3) whether the site or sites in question have a parent corporation or entity, and if so:

(A) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to the parent corporation or entity;

(B) the overall financial resources of any parent corporation or entity;

(C) the overall size of the parent corporation or entity with respect to the number of its employees;

(D) the number, type, and location of the parent corporation’s or entity’s facilities; and

(E) the type of operation or operations of any

parent corporation, including the composition, structure, and functions of its workforce. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-21. Removal of barriers. (a) Each public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, if removal is readily achievable.

(b) Removal of barriers may include the following actions:

- (1) installing ramps;
- (2) making curb cuts in sidewalks and entrances;
- (3) repositioning shelves;
- (4) rearranging tables, chairs, vending machines, display racks, and other furniture;
- (5) repositioning telephones;
- (6) adding raised markings on elevator control buttons;
- (7) installing flashing alarm lights;
- (8) widening doors;
- (9) installing offset hinges to widen doorways;
- (10) eliminating a turnstile or providing an alternative accessible path;
- (11) installing accessible door hardware;
- (12) installing grab bars in toilet stalls;
- (13) rearranging toilet partitions to increase maneuvering space;
- (14) insulating lavatory pipes under sinks to prevent burns;
- (15) installing a full-length bathroom mirror;
- (16) repositioning the paper towel dispenser in a bathroom;
- (17) creating designated accessible parking spaces;
- (18) installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- (19) removing high pile, low density carpeting;
- (20) installing vehicle hand controls;
- (21) installing a raised toilet seat; and
- (22) installing assistive listening systems. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-22. Removal of barriers; priorities. Each public accommodation shall consider taking measures to comply with the barrier removal requirements of K.A.R. 21-70-21 in accordance with the following order of priorities. (a) The first priority shall be to make measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation.

These measures may include installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(b) The second priority shall be to take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures may include adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(c) The third priority shall be to take measures to provide access to restroom facilities. These measures may include removing obstructing furniture or vending machines, widening doors, installing ramps, providing accessible signage, widening toilet stalls, and installing grab bars.

(d) The final priority shall be to take any other measures necessary to provide access to its goods, services, facilities or accommodations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-23. Removal of barriers; relationship to alteration requirements. (a) Except as provided in subsection (b) of this regulation, measures taken to comply with the barrier removal requirements of K.A.R. 21-70-21 shall comply with the applicable requirements in these regulations for the alteration of that element. However, the "path of travel" requirement in K.A.R. 21-70-36 shall not apply to measures taken solely to comply with the barrier removal requirement.

(b) If, as a result of compliance with the alterations requirements specified in subsection (a) of this regulation, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements.

(c) Those readily achievable measures may include providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. However, no measure shall be taken that would pose a significant risk to the health or safety of individuals with disabilities or others. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-24. Removal of barriers; portable ramps. If installation of a permanent ramp is not readily achievable, a portable ramp may be used

to comply with K.A.R. 21-70-21. To avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features, including nonslip surfaces, railings, anchoring, and strength of materials. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-25. Removal of barriers; selling or serving space. The rearrangement of temporary or movable structures, including furniture, equipment, and display racks shall not be considered readily achievable if it results in a significant loss of selling or serving space. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-26. Limitation on barrier removal obligations. (a) The requirements for barrier removal under these regulations shall not exceed the standards for alteration in K.A.R. 21-70-21.

(b) If relevant standards for alterations are not provided in K.A.R. 21-70-34, the requirements for barrier removal under these regulations shall not be interpreted to exceed the standards for new construction in these regulations.

(c) These regulations shall not apply to transportation services subject to K.A.R. 21-70-32. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-27. Alternatives to barrier removal. (a) If a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall make its goods, services, facilities or accommodations available through alternative methods, if those methods are readily achievable.

(b) Alternatives to barrier removal may include the following actions:

- (1) providing curb service or home delivery;
- (2) retrieving merchandise from inaccessible shelves or racks; or
- (3) relocating activities to accessible locations.

(c) If removal of barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema is not readily achievable, the cinema shall establish a film rotation schedule that provides reasonable access to all films for individuals who use wheelchairs. Reasonable notice shall be provided to the public as to the location and time of accessible showings.

(Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-28. Accessible or special goods.

(a) The act and these regulations shall not be interpreted to require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.

(b) Each public accommodation shall order accessible or special goods at the request of an individual with disabilities, if in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.

(c) Accessible or special goods may include Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-29. Seating in assembly areas; existing facilities. (a) To the extent that it is readily achievable, assembly areas of a public accommodation shall:

(1) provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(2) locate the wheelchair seating spaces so that they:

- (A) are dispersed throughout the seating area;
- (B) provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) permit individuals who use wheelchairs to sit with family members or other companions.

(b) If removal of seats is not readily achievable, each public accommodation with assembly areas shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(c) The requirement of subsection (a) shall not be interpreted to exceed the standards for alterations in K.A.R. 21-70-34. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-30. Seating in assembly areas; new construction and alterations. The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in K.A.R. 21-70-34. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-31. Examinations and courses. (a) Each public accommodation that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer the examinations or courses in a place and manner accessible to persons with disabilities or offer alternative arrangements for access.

(b) Examinations.

(1) Each private entity offering an examination covered by this section shall assure that:

(A) the examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills, except where those skills are the factors that the examination purports to measure;

(B) any examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and

(C) the examination is administered in facilities that are accessible to individuals with disabilities or alternative arrangements for access are made.

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

(3) Each private entity offering an examination covered by this regulation shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that private entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue

burden. Auxiliary aids and services required by this regulation may include:

(A) taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(B) Braille or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities;

(C) transcribers for individuals with manual impairments; and

(D) other similar services and actions.

(4) Alternative arrangements for access may include provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements shall provide conditions which are comparable to those provided for nondisabled individuals.

(c) Courses.

(1) Each private entity that offers a course covered by these regulations shall make any modifications to that course necessary to ensure that the place and manner in which the course is given are accessible to individuals with disabilities.

(2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of manner in which the course is conducted or course materials are distributed.

(3) Each private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the private entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include:

(A) taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(B) Braille or large print texts or qualified readers for individuals with visual impairments and learning disabilities;

(C) classroom equipment adapted for use by individuals with manual impairments; and

(D) other similar services and actions.

(4) Courses shall be administered in facilities that are accessible to individuals with disabilities, or alternative arrangements for access shall be made.

(5) Alternative arrangements for access may include offering the course through videotape, cassettes, or prepared notes. Alternative arrangements shall provide conditions which are comparable to those provided for nondisabled individuals. (Authorized by K.S.A. 44-1004; implementing K.S.A. 1992 Supp. 1009; effective Dec. 19, 1994.)

21-70-32. Transportation. (a) Each public accommodation which provides any transportation service shall ensure that each service provided by the public accommodation is available and accessible to people with disabilities. Necessary modifications may include:

- (1) retrofitting with lifts or ramps
- (2) retrofitting with P.A. systems
- (3) retrofitting with visible signage
- (4) using color coding on vehicles and routes

(b) Only those modifications which are readily achievable shall be required. However, good faith efforts shall be made to accomplish readily achievable modifications which make transportation services as accessible as possible. This regulation shall not be considered to require premature replacement of any existing vehicle.

(c) All services shall be provided equally in the most integrated manner possible to all individuals with disabilities including:

- (1) equal fares for all people regardless of accommodation provided;
- (2) equal access to all discounts, specials, programs, passes, and any other event or service in the most integrated setting possible;
- (3) accessibility to all fixed routes and shuttle services operated by units and subdivisions of government, unless an undue hardship would occur; and

(4) use of accessible vehicles in the existing fleet of vehicles, operating to the maximum extent feasible. When determining whether an activity referred to herein is readily achievable, providing an equivalent accommodation by contractual or other indirect means shall be considered.

(d) Each new vehicle used to transport the general public shall be accessible unless the vehicle is not generally available in an accessible design from factory dealerships or custom chassis or body manufacturers. At a minimum, a nationwide search shall be undertaken for vehicles available in an accessible design before it can be claimed as a defense that it is not possible to obtain them.

(Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-33. Transportation provided by public accommodations. (a) Each public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, shall be subject to the act and these regulations.

(b) Transportation services shall include various types of shuttle services operated between a transportation facility and other places of public accommodation, including:

- (1) customer shuttle bus services operated by private companies and shopping centers; and
- (2) transportation provided within recreational facilities, including stadiums, zoos, amusement parks, and ski resorts.

(c) Each public accommodation subject to the act and these regulations shall remove transportation barriers in existing vehicles and rail cars used for transporting individuals when removal is readily achievable. However, this provision shall not be applicable to barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-34. New construction; exception for structural impracticability; elevator exemption. (a) Except as provided in subsection (b) of this regulation, an unlawful discriminatory practice shall include a failure to design and construct facilities for first occupancy after July 1, 1994, that are readily accessible to and useable by individuals with disabilities.

(b) For purposes of the act and this regulation, a facility shall be considered to have been designed and constructed for first occupancy after July 1, 1994, only if:

(1) (A) the last application for a building permit or permit extension for the facility is certified to be complete, by a state, county, or local government after July 1, 1993; or

(B) in those jurisdictions where the government does not certify completion of applications, the last application for a building permit or permit extension for the facility is received by the state, county, or local government after July 1, 1992; and

(2) if the first certificate of occupancy for the facility is issued after July 1, 1994.

(c) (1) If an entity can demonstrate that it is structurally impracticable to fully comply with the

requirements of this regulation, compliance shall be required to the extent that it is not structurally impracticable. Full compliance shall be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If providing accessibility to individuals with certain disabilities, such as those who use wheelchairs, would be structurally impracticable, accessibility shall nonetheless be ensured in accordance with this subsection (c) to persons with other types of disabilities, such as those who use crutches or who have sight, hearing, or mental impairments.

(d) Installation of an elevator shall not be required in a facility that is less than three stories high or has less than 3000 square feet per story, unless the facility houses one or more of the following:

(1) a shopping center or shopping mall, or a professional office of a health care provider; or

(2) a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In these facilities, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities and other common areas open to the public, shall be on an accessible route from an accessible entrance.

(e) The elevator exemption set forth in subsection (d) shall not obviate or limit in any way the obligation to comply with the other accessibility requirements established in subsection (a) of this regulation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-35. Alterations. (a) (1) Any alteration to a place of public accommodation after July 1, 1991, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration shall be deemed to be undertaken after July 1, 1991, if the physical alteration begins after that date.

(b) For the purposes of this regulation, "alteration" means a change to a place of public accommodation that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations may include remodeling, renovation, rehabilitation, reconstruction, historic res-

toration, changes or rearrangements in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions.

(2) Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems shall not be considered alterations unless they affect the usability of the building or facility.

(3) If existing elements, spaces or common areas are altered, then each altered element, space or area shall comply with the applicable standards for accessible design in the Americans with disabilities act accessibility guidelines (ADAAG) dated July 26, 1991, which are incorporated herein by reference.

(c) The phrase "to the maximum extent feasible," as used in this regulation, shall apply to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in compliance with this regulation to individuals with certain disabilities, such as those who use wheelchairs, would not be feasible, the facility shall be made accessible to persons with other types of disabilities, such as those who use crutches, or those who have sight, hearing, or other impairments. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-36. New construction and alterations; path of travel. (a) If an alteration affects or could affect the usability of or access to an area of a facility that contains a primary function, the alteration shall be made so as to ensure that to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones and drinking fountains serving the altered area is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) "Primary function" means a major activity for which the facility is intended. Areas that contain a primary function may include the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center

and offices or other work areas in the public accommodation. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms shall not be considered areas containing a primary function. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-37. Alterations to an area containing a primary function. (a) Alterations that affect the usability of or access to an area containing a primary function may include:

- (1) remodeling merchandise display areas or employee work areas in a department store; and
- (2) replacing an inaccessible floor surface in the customer service or employee work areas of a bank.

(b) For the purposes of this regulation, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of an area containing a primary function. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-38. New construction and alterations; path of travel; landlord or tenant. If a tenant is making alterations as defined in K.A.R. 21-60-16 that would trigger the requirements of K.A.R. 21-70-36, those alterations by the tenant in areas that only the tenant occupies shall not trigger an obligation on the landlord to alter the areas of the facility under the landlord's authority in order to comply with the "path of travel" requirements in K.A.R. 21-70-36, if those areas are not otherwise being altered. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-39. New construction and alterations; definition of path of travel. (a) The term "path of travel" means a continuous, unobstructed way of pedestrian passage by which the altered area may be approached, entered and exited, and which connects the altered area with:

- (1) an exterior approach, including sidewalks, streets, and parking areas;
 - (2) an entrance to the facility; and
 - (3) other parts of the facility.
- (b) An accessible path of travel may consist of:
- (1) walks and sidewalks;
 - (2) curb ramps and other interior or exterior pedestrian ramps;

(3) clear floor paths through lobbies, corridors, rooms, and other improved areas; or

(4) part or a combination of these elements.

(c) For the purposes of this regulation, the term "path of travel" also shall include the restrooms, telephones, and drinking fountains serving the altered area. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-40. New construction and alterations; path of travel; disproportionality. (a) The cost of alterations made to provide an accessible path of travel to the altered areas shall be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(b) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(1) costs associated with providing an accessible entrance and an accessible route to the altered area, including the cost of widening doorways or installing ramps;

(2) costs associated with making restrooms accessible, including installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(3) costs associated with providing accessible telephones, including relocating the telephone to an accessible height, installing amplification devices, or installing a telecommunications device for deaf persons (TDD); and

(4) costs associated with relocating an inaccessible drinking fountain. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-41. New construction and alterations; path of travel; duty to provide accessible features in the event of disproportionality. (a) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(b) In choosing which accessible elements to provide, consideration shall be given to altering those elements that will provide the greatest access, in the following order:

- (1) an accessible entrance;
- (2) an accessible route to the altered area;

- (3) at least one accessible restroom for each sex or a single unisex restroom;
- (4) accessible telephones;
- (5) accessible drinking fountains; and
- (6) when possible, additional accessible elements, including parking, storage, and alarms. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-42. New construction and alterations; path of travel; series of smaller alterations. (a) The obligation to provide an accessible path of travel shall not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(b) Cost of alterations. (1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(2) Only alterations undertaken after July 1, 1991, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-43. Alterations; elevator exemption. (a) Installation of an elevator shall not be required in an altered facility that is less than three stories high or has less than 3,000 square feet per story, except with respect to:

- (1) any public accommodation located in a shopping center or a shopping mall;
- (2) the professional office of a health care provider; and
- (3) any public transportation facility.

(b) The exemption provided in subsection (a) of this regulation shall not obviate or limit in any way the obligation to comply with the other accessibility requirements established by the act or these regulations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-44. Alterations; historic preservation. (a) Alterations to buildings or facilities

that are eligible for listing in the national register of historic places under the national historic preservation act (16 U.S.C. 470 et seq.), or are designated as historic under state or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to 28 CFR Part 36 of the Americans with disabilities act accessibility guidelines dated July 26, 1991.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A to the Americans with disabilities act accessibility guidelines dated July 26, 1991 that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of K.A.R. 21-70-41. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-45. Standards for new construction and alterations. New construction and alterations subject to the act and this regulation shall comply with the standards for accessible design published in appendix A to 28 CFR Part 36, the Americans with disabilities act accessibility guidelines (ADAAG), dated July 26, 1991. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-46. (a) The term “disability” shall not be interpreted to include:

- (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) compulsive gambling, kleptomania, or pyromania; or
- (3) psychoactive substance use disorder resulting from current illegal use of drugs.

(b) The phrase “physical or mental impairment” shall not be interpreted to include homosexuality or bisexuality. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-47. Smoking. This act shall not preclude the prohibition of, or the imposition of restrictions on smoking in places of public accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-48. Health insurance, life insurance and other benefit plans. (a) Any insurer, hospital, medical service company, health maintenance organization, or any similar entity or agent of an entity that administers benefit plans may underwrite risks, classify risks, or administer risks in a manner based on or not inconsistent with state law.

(b) Any person or organization covered by the act may establish or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks in a manner based on or not inconsistent with state law.

(c) Any person or organization covered by the act may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The activities described in subsections paragraphs (a), (b), and (c) shall be permitted unless these activities are a subterfuge to evade the purposes of the act.

(e) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-49. Personal devices and services. A public accommodation shall not be required to provide its customers, clients, or participants with:

- (a) personal devices, such as wheelchairs;
- (b) individually prescribed devices, such as prescription eyeglasses or hearing aids; or
- (c) services of a personal nature including assistance in eating, toileting, or dressing. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-50. Illegal use of drugs. The term "illegal use of drugs" shall not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the controlled substances act, 21 U.S.C. 812, or other provisions of federal or Kansas law. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-51. Illegal use of drugs. (a) Except as provided in paragraph (c)(2), the act and these regulations shall not be construed as prohibiting

discrimination against an individual based on that individual's current illegal use of drugs.

(b) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(2) is currently participating in a supervised rehabilitation program; or

(3) is erroneously regarded as engaging in such use.

(c) (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) Any drug rehabilitation or treatment program may deny participation to individuals who engage in the illegal use of drugs while they are in the program. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-52. Illegal use of drugs; drug testing. (a) The act and these regulations shall not prohibit a public accommodation from adopting or administering reasonable policies or procedures that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in the illegal use of drugs. These policies and procedures may include drug testing.

(b) Nothing in this regulation shall be construed to encourage, prohibit, restrict, or authorize testing for the illegal use of drugs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-53. Relationship to other law. (a) These regulations shall not be construed to invalidate or limit the remedies, rights and procedures of any other state or local laws that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

(b) Except as otherwise provided in these regulations, these regulations shall not be construed to apply a lesser standard than the standards applied under the Kansas handicapped accessibility standards, K.S.A. 1993 Supp. chapter 58, article 13, or regulations issued by the attorney general

or secretary of administration of the state of Kansas pursuant to that act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-54. Certification of state laws or local building codes. (a) For purposes of this regulation:

(1) “assistant attorney general” means the assistant attorney general for civil rights, the United States department of justice (DOJ), or his or her designee;

(2) “certification of equivalency” means a final certification by the assistant attorney general that a code meets or exceeds the minimum requirements of title III of the Americans with disabilities act (ADA), 42 U.S.C. 12181, for accessibility and usability of facilities covered by that title; and

(3) “code” means a state law or local building code or similar ordinance, or part thereof, that establishes accessibility requirements.

(b) If the assistant attorney general certifies that a code meets or exceeds the minimum requirements of title III of the ADA at any proceeding under the act, the DOJ certification of equivalency shall be rebuttable evidence that the state law or local ordinance does meet or exceed the minimum requirements of the act for accessibility and usability of facilities covered by the act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

Articles 71 to 79.—RESERVED

Article 80.—GUIDELINES ON AGE DISCRIMINATION IN EMPLOYMENT

21-80-1. Unlawful employment practices based on age. No employer, employment agency, or labor organization shall set an arbitrary age limit in relation to employment or membership except as otherwise provided by commission rules or by the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-2. Job opportunities advertising. Help wanted notices or advertisements shall not contain age-specific terms and phrases, including “young,” “boy,” “girl,” “college student,” “recent college graduate,” “retired person,” or others of a similar nature, unless a bona fide occupational requirement for the position has been established.

(Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-3. Age information on job applications and other preemployment inquiries.

(a) Any preemployment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect preemployment inquiry is based upon a bona fide occupational qualification.

(b) The following inquiries shall be permissible:

(1) Preemployment inquiries regarding the age of an applicant if the inquiry is made in good faith for a nondiscriminatory purpose; and

(2) preemployment inquiries to determine that an applicant is over 18 years of age. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-4. Bona fide occupational qualifications. (a) The bona fide occupational qualification exception as to age shall be narrowly construed.

(b) An employer asserting a bona fide occupational qualification defense has the burden of proving that:

(1) the age limit is reasonably necessary to the essence of the business; and

(2)(A) that all or substantially all individuals excluded from the job involved are in fact not qualified; or

(B) that some of the individuals were excluded on the basis of a trait that cannot be ascertained except by reference to age.

(c) If the employer’s bona fide occupational qualification defense is based on public safety, the employer shall prove that the challenged practice does effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-5. Differentiations based on necessary factors other than age. (a) If an employ-

ment practice uses age as a limiting criterion, the defense that the practice is justified by a necessary factor other than age is unavailable.

(b) Any employment practice, including a test, which is claimed as a basis for different treatment of employees or applicants for employment on the grounds that it is a necessary factor other than age, may only be justified on the basis of business necessity or valid business motive if such a practice has an adverse impact on individuals within the protected age group. Tests which are asserted as reasonable factors other than age will be scrutinized in accordance with the standards set forth at Article 30 of these regulations.

(c) If the exception of a necessity factor other than age is raised against an individual claim of discriminatory treatment, the employer shall bear the burden of proving the necessary factor other than age.

(d) An employment practice based on the average cost of employing older employees as a group shall be unlawful except with respect to employee benefit plans which qualify for the section 1113(b)(2) exception to the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-6. Bona fide seniority systems.

(a) Each bona fide seniority system shall be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. Other secondary factors, including merit, capacity, or ability, also may be used.

(b) A seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to older workers, may be found to be a subterfuge to evade the purposes of the Kansas age discrimination in employment act.

(c) Essential terms and conditions of a seniority system shall be communicated to the affected employees and applied uniformly to all those affected, regardless of age. Any seniority system shall not be considered a bona fide seniority system within the meaning of the Kansas age discrimination in employment act if its terms and conditions are not communicated and applied as required by this subsection. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-7. Prohibition of involuntary retirement. (a) Each seniority system or employee benefit plan shall not require or permit the involuntary retirement of any individual. Accordingly, any system or plan provision requiring or permitting involuntary retirement shall be unlawful, unless the provision is otherwise permitted by state or federal law or by an ordinance or resolution which preempts, supersedes or otherwise takes precedence over the Kansas age discrimination in employment act.

(b) Any plan may permit individuals to elect early retirement at a specified age at their own option. Any plan may require early retirement for reasons other than age. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-8. Exemption for employees serving under a contract of unlimited tenure.

(a) The exemption for employees serving under a contract of unlimited tenure at an institution of higher education may be applied to any individual who attains age 70 prior to January 1, 1994, and whose job duties and responsibilities cease prior to January 1, 1994, regardless of the contract expiration date.

(b) The party seeking to invoke the exemption for employees serving under a contract of unlimited tenure shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. This exemption shall be narrowly construed.

(c) Definitions.

(1) "Institution of higher education" means all public and private universities and colleges which grant tenure to employees.

(2) "Any employee" means faculty, teachers and other groups of employees who have tenured status at an institution of higher education, including academic deans, scientific researchers, professional librarians and counseling staff.

(3) "Tenure" means an arrangement under which certain appointments in an institution of higher education are continued until retirement for age or physical disability, subject to dismissal for adequate cause or under extraordinary circumstances on account of financial exigency or change of institutional program.

(4) "Unlimited" means tenure which is not limited to a specific term. A contract or other similar arrangement which is limited to a specific term shall not meet the requirements of the exemption.

(d) A contract or other similar arrangement which meets the standards in the "1940 Statement of Principles on Academic Freedom and Tenure," jointly developed by the Association of American Colleges and the American Association of University Professors, shall be deemed to satisfy the tenure requirements of the exemption.

(e) Any employee who is not assured of a continuing appointment either by contract, unlimited tenure or another similar arrangement shall not be exempted from the prohibitions against compulsory retirement, even if the employee performs functions identical to those performed by employees with appropriate tenure.

(f) Any employee within the exemption may lawfully be required to retire on account of age at age 70 or above. In the alternative, the employer may retain such an employee either in the same position or status or in a different position or status if the employee voluntarily accepts this new position or status. Any employee who accepts a nontenured position or part-time employment shall not be treated any less favorably, on account of age, than any similarly situated younger employee, unless the less favorable treatment is excused by an exception of the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113, 44-1118; effective Dec. 28, 1992.)

21-80-9. Exemption for bona fide executive or high policy making employees. (a) The party seeking to invoke the exemption for bona fide executive or high policy-making employees shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. This exemption shall be narrowly construed.

(b) Any employee within the exemption may lawfully be required to retire on account of age at age 65 or above. In the alternative, the employer may retain such an employee either in the same position or status or in a different position or status. Any employee who accepts such a new status or position shall not get treated any less favorably, on account of age, than any similarly situated younger employee.

(c) The bona fide executive exemption shall apply to top-level employees who exercise substantial executive authority over a significant number of employees and a large volume of business.

Any individual in the corporate organizational structure who possesses a comparable or greater

level of responsibility and authority, as measured by established and recognized criteria, shall also qualify for this exemption.

(d) The phrase "high policymaking position" shall be limited to certain top-level employees:

- (1) who are not bona fide executives;
- (2) who are individuals who have little or no line authority; and

(3) whose position and responsibility are such that they play a significant role in the development of corporate policy and effectively recommend its implementation.

(e) Each employee qualifying for this exemption shall have been a bona fide executive or held a high policy-making position, as those terms are defined in this regulation, for the two-year period immediately before retirement.

(f) "Annual retirement benefit" means the aggregate sum payable during each one-year period of retirement. The initial one-year period shall commence from the date the benefits first became receivable by the retiree. Once established, the annual period upon which calculations are based may not be changed from year to year.

(g) The annual retirement benefit shall be immediately available to the employee retiring under this exemption. For purposes of determining compliance, "immediate" means that the payment of plan benefits, in a lump sum or the first of a series of periodic payments, shall occur not later than 60 days after the effective date of the retirement in question. The fact that an employee will receive benefits only after expiration of the 60-day period shall not preclude retirement under the exemption, if the employee could have elected to receive benefits within that period.

(h) To determine whether the aggregate annual retirement benefit equals at least \$44,000, only benefits authorized by and provided under the terms of a pension, profit-sharing, savings, or deferred compensation plan shall be included.

(i)(1) The annual retirement benefit shall be nonforfeitable. Accordingly, the exemption shall not be applied to any employee subject to plan provisions which could cause the cessation of payments to a retiree or result in the reduction of benefits to less than \$44,000 in any one year. However, retirement benefits shall not be considered forfeitable solely because the benefits are discontinued or suspended for reasons permitted under section 411(a)(3) of the Internal Revenue Code.

(2) An annual retirement benefit shall not be

considered forfeitable merely because the minimum statutory benefit level is not guaranteed against the possibility of plan bankruptcy or is subject to benefit restrictions in the event of early termination of the plan in accordance with Treasury Regulation 1.401-4(c). However, there shall be at least a reasonable expectation that the plan will meet its obligations when the retirement in question becomes effective. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A.

1991 Supp. 44-1113, 44-1118; effective Dec. 28, 1992.)

21-80-10. Firefighters and law enforcement officers. The party seeking to invoke the exemption for firefighters and law enforcement officers shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)