

Senate Substitute for HOUSE BILL No. 2096

By Committee on Commerce

3-23

1 AN ACT concerning public employees; relating to the public employer-
2 employee relations act; certain deductions from wages; amending
3 K.S.A. 75-4321, 75-4322, 75-4324, 75-4326, 75-4328, 75-4329, 75-
4 4335 and 75-4337 and K.S.A. 2014 Supp. 75-4327, 75-4330, 75-4332,
5 75-4333, 75-4334 and 75-4338 and repealing the existing sections; also
6 repealing K.S.A. 2014 Supp. 75-4323 and 75-5713.
7

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

9 New Section 1. (a) The secretary shall adopt such rules and
10 regulations necessary to implement and enforce the provisions of K.S.A.
11 75-4321 et seq., and amendments thereto.

12 (b) This section shall be a part of and supplemental to the public
13 employer-employee relations act, K.S.A. 75-4321 et seq., and amendments
14 thereto.

15 New Sec. 2. (a) The public employee relations board is hereby
16 abolished. Whenever the public employee relations board is referred to or
17 designated by a statute, contract or other document, such reference or
18 designation shall be deemed to apply to the secretary of labor. All powers,
19 duties, functions, records and property of the public employee relations
20 board, as provided by law, are hereby transferred to and conferred and
21 imposed upon the secretary of labor. The secretary of labor shall be the
22 successor in every way to the powers, duties and functions of the public
23 employee relations board, as provided by law.

24 (b) All rules and regulations of the public employee relations board
25 shall continue to be effective and shall be deemed to be duly adopted rules
26 and regulations of the secretary of labor until revised, amended, revoked or
27 nullified pursuant to law.

28 (c) All policies, orders and directives of the public employee relations
29 board shall continue to be effective and shall be deemed to be policies,
30 orders and directives of the secretary of labor until revised, amended,
31 revoked or nullified pursuant to law.

32 (d) All officers and employees who were engaged in the exercise of
33 powers or the performance of duties and functions of or on behalf of the
34 public employee relations board and who, in the opinion of the secretary of
35 labor, are necessary to the exercise of powers or the performance of duties
36 and functions of the department of labor shall remain or become officers

1 and employees of the department of labor. Any such officer or employee
2 shall retain all retirement benefits and rights of civil service which had
3 accrued to or vested in such officer or employee, and the service of each
4 such officer and employee shall be deemed to have been continuous. All
5 transfers and any abolishment of positions of personnel in the classified
6 civil service under the Kansas civil service act shall be in accordance with
7 civil service laws and any rules and regulations adopted thereunder.

8 (e) No vested right of any person shall be affected and no lawful
9 claim of any person against the state shall abate by reason of the abolition
10 of the public employee relations board, nor shall any lawful claim or right
11 of the state abate by reason of abolition of the public employee relations
12 board. Responsibility for litigation or other reconciliation of such rights
13 and claims is hereby transferred to and imposed upon the secretary of
14 labor.

15 (f) No suit, action or other proceeding, judicial or administrative,
16 lawfully commenced, or which could have been commenced, by or against
17 the public employee relations board, or by or against any officer or
18 employee of the public employee relations board in relation to the
19 discharge of duties imposed on such officer or employee by law, shall
20 abate by reason of the abolition of the public employee relations board.
21 The court may allow any such suit, action or other proceeding to be
22 maintained by or against the secretary of labor.

23 (g) When any conflict arises as to the disposition of any power, duty
24 or function or the unexpended balance of any appropriation or any
25 unexpended moneys received from private persons or organizations as a
26 result of the abolition of the public employee relations board, such conflict
27 shall be resolved by the governor, and the decision of the governor shall be
28 final.

29 (h) When any conflict arises as to the proper disposition of any
30 property or records as a result of the abolition of the public employee
31 relations board, such conflict shall be resolved by the governor, and the
32 decision of the governor shall be final.

33 (i) This section shall be part of and supplemental to the public
34 employer-employee relations act.

35 Sec. 3. K.S.A. 75-4321 is hereby amended to read as follows: 75-
36 4321. (a) The legislature hereby finds and declares that:

37 (1) The people of this state have a fundamental interest in the
38 development of harmonious and cooperative relationships between
39 government and its employees;

40 (2) the denial by some public employers of the right of public
41 employees to organize and the refusal by some to accept the principle and
42 procedure of full communication between public employers and public
43 employee organizations can lead to various forms of strife and unrest;

1 (3) the state has a basic obligation to protect the public by assuring, at
2 all times, the orderly and uninterrupted operations and functions of
3 government;

4 (4) there neither is, nor can be, an analogy of statuses between public
5 employees and private employees, in fact or law, because of inherent
6 differences in the employment relationship arising out of the unique fact
7 that the public employer was established by and is run for the benefit of all
8 the people and its authority derives not from contract nor the profit motive
9 inherent in the principle of free private enterprise, but from the
10 constitution, statutes, civil service rules, regulations and resolutions; and

11 (5) the difference between public and private employment is further
12 reflected in the constraints that bar any abdication or bargaining away by
13 public employers of their continuing legislative discretion and in the fact
14 that constitutional provisions as to contract, property, and due process do
15 not apply to the public employer and employee relationship.

16 (b) Subject to the provisions of subsection (c), it is the purpose of this
17 act to obligate public agencies, public employees and their representatives
18 to enter into discussions with affirmative willingness to resolve grievances
19 and disputes relating to conditions of employment, acting within the
20 framework of law. It is also the purpose of this act to promote the
21 improvement of employer-employee relations within the various public
22 agencies of the state and its political subdivisions by providing a uniform
23 basis for recognizing the right of public employees to join organizations of
24 their own choice, or to refrain from joining, and be represented by such
25 organizations in their employment relations and dealings with public
26 agencies.

27 (c) The governing body of any public employer, other than the state
28 and its agencies, by a majority vote of all the members may elect to bring
29 such public employer under the provisions of this act, and upon such
30 election the public employer and its employees shall be bound by its
31 provisions from the date of such election. Once an election has been made
32 to bring the public employer under the provisions of this act it continues in
33 effect unless rescinded by a majority vote of all members of the governing
34 body. ~~No vote to rescind shall take effect until the termination of the next~~
35 ~~complete budget year following such vote.~~

36 Sec. 4. K.S.A. 75-4322 is hereby amended to read as follows: 75-
37 4322. As used in this act:

38 (a) "Public employee" means any person employed by any public
39 agency, except those persons classed as supervisory employees,
40 professional employees of school districts, as defined by subsection (e) of
41 K.S.A. 72-5413, and amendments thereto, elected and management
42 officials, and confidential employees.

43 (b) "Supervisory employee" means any individual who normally

1 performs different work from ~~his~~ *such individual's* subordinates, having
2 authority, in the interest of the employer, to hire, transfer, suspend, lay off,
3 recall, promote, discharge, assign, reward; or discipline other employees,
4 or responsibly to direct them, or to adjust their grievances, or effectively to
5 recommend a preponderance of such actions, if in connection with the
6 foregoing, the exercise of such authority is not of a merely routine or
7 clerical nature, but requires the use of independent judgment. A
8 memorandum of agreement may provide for a definition of "supervisory
9 employees" as an alternative to the definition herein.

10 (c) "Confidential employee" means any employee whose unrestricted
11 access to confidential personnel files or other information concerning the
12 administrative operations of a public agency, or whose functional
13 responsibilities or knowledge in connection with the issues involved in the
14 meet and confer process would make ~~his~~ *such employee's* membership in
15 the same employee organization as other employees incompatible with ~~his~~
16 *such employee's* official duties.

17 (d) "Professional employee" includes any employee: (1) Whose work
18 is predominantly intellectual and varied in character as opposed to routine
19 mental, manual, mechanical, or physical work; involves the consistent
20 exercise of discretion and judgment; requires knowledge of an advanced
21 type in a field of science or learning customarily acquired by prolonged
22 study in an institution of higher learning; or (2) who has completed
23 courses of prolonged study as described in ~~paragraph (1) of this subsection~~
24 *(d)(1)*, and is performing related work under the supervision of a
25 professional person in order to qualify as a professional employee as
26 defined in ~~paragraph (1) of this subsection~~ *(d)(1)*; or (3) attorneys-at-law
27 or any other person who is registered as a qualified professional by a board
28 of registration or other public body established for such purposes under the
29 laws of this state.

30 (e) "Elected and management officials" means any elective official
31 and any appointed officer charged by law with major administrative and
32 management responsibilities.

33 (f) "Public agency" or "public employer" means every governmental
34 subdivision, including any county, township, city, school district, special
35 district, board, commission, or instrumentality or other similar unit whose
36 governing body exercises similar governmental powers, and the state of
37 Kansas and its state agencies.

38 (g) "Governing body" means the legislative body, policy board or
39 other authority of the public employer possessing legislative or
40 policymaking responsibilities pursuant to the constitution or laws of this
41 state.

42 (h) "Representative of the public agency" means the chief executive
43 officer of the public employer or ~~his or her~~ *such officer's* designee, except

1 when the governing body provides otherwise, and except in the case of the
2 state of Kansas and its state agencies. Such chief executive shall be for
3 counties, the chairman of the board of county commissioners; for cities,
4 the mayor, city manager or city superintendent; for school districts, the
5 president of the board of education; and for other local units, such similar
6 elected or appointed officer. In the case of the state of Kansas and its state
7 agencies, "representative of the public employer" means a team of persons,
8 the head of which shall be a person designated by the secretary of
9 administration and the heads of the state agency or state agencies involved
10 or one person designated by each such state agency head.

11 (i) "Employee organization" means any organization which includes
12 employees of a public agency and which has as one of its primary
13 purposes representing such employees in dealings with that public agency
14 over conditions of employment and grievances.

15 (j) "Recognized employee organization" means an employee
16 organization which has been formally acknowledged by the public agency
17 or certified as representing a majority of the employees of an appropriate
18 unit.

19 (k) "Business agent" means any authorized person who is a full-time
20 official of an employee organization and whose principal duties are to act
21 or to attempt to act for an employee organization: (1) In proceedings to
22 meet and confer and other proceedings involving a memorandum of
23 agreement;; (2) in servicing existing memorandums of agreement;; or (3)
24 in organizing employees into employee organizations.

25 ~~(l) "Board" means the public employee relations board established~~
26 ~~pursuant to this act.~~

27 ~~(m) (l)~~ (l) "Meet and confer in good faith" is the process whereby the
28 representative of a public agency and representatives of recognized
29 employee organizations have the mutual obligation personally to meet and
30 confer in order to exchange freely information, opinions and proposals to
31 endeavor to reach agreement on conditions of employment.

32 ~~(n) (m)~~ (m) "Memorandum of agreement" means a written memorandum
33 of understanding arrived at by the representatives of the public agency and
34 a recognized employee organization which may be presented to the
35 governing body of a public employer or its statutory representative and to
36 the membership of such organization for appropriate action.

37 ~~(o) "Mediation" means effort by an impartial third party to assist in~~
38 ~~reconciling a dispute regarding conditions of employment between~~
39 ~~representatives of the public agency and recognized employee~~
40 ~~organizations through interpretation and advice.~~

41 ~~(p) "Fact-finding" means investigation of such a dispute by an~~
42 ~~individual, panel, or board with the fact-finder submitting a report to the~~
43 ~~parties describing the issues involved; the report shall contain~~

1 recommendations for settlement and may be made public.

2 ~~(q) "Arbitration" means interpretation of the terms of an existing or a~~
3 ~~new memorandum of agreement or investigation of disputes by an~~
4 ~~impartial third party whose decision may or may not be final and binding.~~
5 ~~Arbitration is advisory when the results are not binding upon the parties; it~~
6 ~~is final and binding when both parties, of their own volition, agree to~~
7 ~~submit a dispute to, and to abide by the decision of, the impartial third~~
8 ~~party.~~

9 ~~(†) (n) "Strike" means an action taken for the purpose of coercing a~~
10 ~~change in the conditions, rights, privileges or obligations of employment~~
11 ~~through the failure by concerted action with others to report for duty or to~~
12 ~~work at usual capability in the performance of the normal duties of~~
13 ~~employment.~~

14 ~~(s) (o) "Lockout" means action taken by the public employer to~~
15 ~~provoke interruptions of or prevent the continuity of work normally and~~
16 ~~usually performed by the employees for the purpose of coercing the~~
17 ~~employees into relinquishing rights guaranteed by this act.~~

18 ~~(†) (p) "Conditions of employment" means salaries, wages, hours of~~
19 ~~work, vacation allowances, sick and injury leave, number of holidays,~~
20 ~~retirement benefits, insurance benefits, prepaid legal service benefits,~~
21 ~~wearing apparel, premium pay for overtime, shift differential pay, jury~~
22 ~~duty and grievance procedures, but shall mean:~~

23 *(1) With regard to counties, townships, cities or special districts, and*
24 *the public employees of counties, townships, cities or special districts,*
25 *"conditions of employment" shall exclusively mean salaries, wages, hours*
26 *of work, vacation allowances, sick and injury leave, number of holidays,*
27 *retirement benefits, insurance benefits, prepaid legal service benefits,*
28 *wearing apparel, premium pay for overtime, shift differential pay, or jury*
29 *duty and grievance procedures.*

30 *(2) With regard to all other public employers, including, but not*
31 *limited to, the state and its agencies, and the public employees of such*
32 *public employers, "conditions of employment" shall exclusively mean the*
33 *minimum amount of salaries and wages.*

34 Nothing in this act shall authorize the adjustment or change of such
35 matters which have been fixed by statute or by the constitution of this
36 state.

37 ~~(†)(q) "Grievance" means a statement of dissatisfaction by a public~~
38 ~~employee; or supervisory employee of a county, city, township or special~~
39 ~~district, employee organization or public employer representing public~~
40 ~~employees employed by a county, city, township or special district, or a~~
41 ~~county, township, city or special district concerning interpretation of a~~
42 ~~memorandum of agreement or traditional work practice.~~

43 ~~(v) (r) "Budget submission date" means: (1) For any public~~

1 employers subject to the budget law in K.S.A. 79-2925 et seq., *and*
2 *amendments thereto*, the date of July 1; and (2) for any other public
3 employer, the date fixed by law. "Budget submission date" means, in the
4 case of the state and its state agencies, the date of September 15.

5 ~~(w)~~ (s) "Legislature" means the legislature of the state of Kansas.

6 (t) "*Secretary*" means the secretary of labor, or the secretary's
7 designee.

8 ~~(x)~~ (u) "State agency" means the same as is ascribed thereto in K.S.A.
9 75-3701, *and amendments thereto*.

10 Sec. 5. K.S.A. 75-4324 is hereby amended to read as follows: 75-
11 4324. Public employees shall have the right to form, join and participate in
12 the activities of employee organizations of their own choosing, for the
13 purpose of meeting and conferring with public employers or their
14 designated representatives with respect to ~~grievances~~ and conditions of
15 employment. Public employees also shall have the right to refuse to join or
16 participate in the activities of employee organizations.

17 Sec. 6. K.S.A. 75-4326 is hereby amended to read as follows: 75-
18 4326. Nothing in this act is intended to circumscribe or modify the existing
19 right of a public employer to:

20 (a) Direct the work of its employees;

21 (b) hire, promote, demote, transfer, assign and retain employees in
22 positions within the public agency;

23 (c) suspend or discharge employees for proper cause;

24 (d) maintain the efficiency of governmental operation;

25 (e) relieve employees from duties because of lack of work or for
26 other legitimate reasons;

27 (f) take actions as may be necessary to carry out the mission of the
28 agency in emergencies; ~~and~~

29 (g) determine the methods, means and personnel by which operations
30 are to be carried on;

31 (h) *determine the criteria, procedures and methods by which*
32 *candidates for hire, promotion, demotion, transfer, assignment, retention,*
33 *furlough, lay off or termination are identified; and*

34 (i) *determine which personnel shall be hired, promoted, demoted,*
35 *transferred, assigned, retained, furloughed, laid off or terminated.*

36 Sec. 7. K.S.A. 2014 Supp. 75-4327 is hereby amended to read as
37 follows: 75-4327. (a) Public employers shall recognize employee
38 organizations for the purpose of representing their members in relations
39 with public agencies as to ~~grievances~~ and conditions of employment.
40 Employee organizations may establish reasonable provisions for an
41 individual's admission to or dismissal from membership.

42 (b) Where an employee organization has been certified by the ~~board~~
43 *secretary* as representing a majority of the employees in an appropriate

1 unit, or recognized formally by the public employer pursuant to the
2 provisions of this act, the appropriate employer shall meet and confer in
3 good faith with such employee organization in the determination of
4 conditions of employment of the public employees as provided in this act,
5 and may enter into a memorandum of agreement with such recognized
6 employee organization.

7 (c) A recognized employee organization shall represent not less than a
8 majority of the employees of an appropriate unit. When a question
9 concerning the designation of an appropriate unit is raised by a public
10 agency, employee organization or by five or more employees, the ~~public~~
11 ~~employee relations board~~ *secretary*, at the request of any of the parties,
12 shall investigate such question and, after a hearing in accordance with the
13 provisions of the Kansas administrative procedure act, rule on the
14 definition of the appropriate unit in accordance with subsection (e).

15 (d) (1) Following determination of the appropriate unit of employees,
16 the ~~public employee relations board~~ *secretary*, at the request of the public
17 employer or on petition of employees, shall investigate questions and
18 certify to the parties in writing, the names of the representatives that have
19 been designated for an appropriate unit. The filing of a petition for the
20 investigation or certification of a representative of employees shall show
21 the names of not less than 30% of the employees within an appropriate
22 unit. In any such investigation, the ~~board~~ *secretary* may provide for a
23 appropriate hearing, shall determine voting eligibility and shall take a
24 secret ballot of employees in the appropriate unit involved to ascertain
25 such representatives for the purpose of formal recognition. Recognition
26 shall be granted only to an employee organization that has been selected as
27 a representative of an appropriate unit, in a secret ballot election, by a
28 majority of the employees in an appropriate unit who voted at such
29 election. Each employee eligible to vote shall be provided the opportunity
30 to choose the employee organization such employee wishes to represent
31 such employee, from among those on the ballot, or to choose "no
32 representation." When an election in which the ballot provided for three or
33 more choices between representatives and no representation resulted in no
34 choice receiving a majority of the valid votes cast, the ~~board~~ *secretary*
35 shall conduct a run-off election by secret ballot. The ballot in a run-off
36 election shall only provide for a selection between the two choices
37 receiving the largest and second largest number of votes in the original
38 election. The ~~board~~ *secretary* is authorized to hold elections to determine
39 whether: (1) (A) An employee organization should be recognized as the
40 formal representative of employees in a unit; (2) (B) an employee
41 organization should replace another employee organization as the formal
42 representative of employees in a unit; (3) or (C) a recognized employee
43 organization should be decertified.

1 (2) Any petition calling for an election in accordance with this section
2 shall be dismissed by the ~~board~~ *secretary* without determining the
3 questions raised therein if such petition is filed more than 150 days or less
4 than 90 days prior to the expiration date of an existing memorandum of
5 agreement which governs the ~~terms and~~ conditions of employment of the
6 employees within the appropriate unit.

7 (3) If the ~~board~~ *secretary* has certified a formally recognized
8 representative in an appropriate unit, it shall not be required to consider the
9 matter again for a period of one year, unless the ~~board~~ *secretary*
10 determines that sufficient reason exists. The ~~board~~ *secretary* may
11 promulgate such rules and regulations as may be appropriate to carry out
12 the provisions of subsections (c) and (d).

13 (e) Any group of public employees considering the formation of an
14 employee organization for formal recognition, any public employer
15 considering the recognition of an employee organization on its own
16 volition and the ~~board~~ *secretary*, in investigating questions at the request of
17 the parties as specified in this section, shall take into consideration, along
18 with other relevant factors: (1) The principle of efficient administration of
19 government; (2) the existence of a community of interest among
20 employees; (3) the history and extent of employee organization; (4)
21 geographical location; (5) the effects of overfragmentation and the
22 splintering of a work organization; (6) the provisions of K.S.A. 75-4325,
23 and amendments thereto; and (7) the recommendations of the parties
24 involved.

25 (f) A recognized employee organization shall not include: (1) Both
26 professional and other employees, unless a majority of the professional
27 employees vote for inclusion in the organization; (2) uniform police
28 employees and public property security guards with any other public
29 employees, but such employees may form their own separate homogenous
30 units; or (3) uniformed firemen with any other public employees, but such
31 employees may form their own separate homogenous units. The
32 employees of a public safety department of cities which has both police
33 and fire protection duties shall be an appropriate unit.

34 (g) It is the intent of this act that employer-employee relations
35 affecting the finances of a public employer shall be conducted at such
36 times as will permit any resultant memorandum of agreement to be duly
37 implemented in the budget preparation and adoption process. A public
38 employer, during the 60 days immediately prior to its budget submission
39 date, shall not be required to recognize an employee organization not
40 previously recognized, nor shall it be obligated to initiate or begin meet
41 and confer proceedings with any recognized employee organization for a
42 period of 30 days before and 30 days after its budget submission date.

43 (h) No employee organization shall be recognized unless it

1 establishes and maintains standards of conduct providing for: (1) The
2 maintenance of democratic procedures and practices, including periodic
3 elections by secret ballot and the fair and equal treatment of all members;
4 and (2) the maintenance of fiscal integrity, including accurate accounting
5 and periodic financial reports open to all members and the prohibition of
6 business or financial interests by officers which conflict with their
7 fiduciary responsibilities.

8 (i) The ~~board~~ *secretary* shall assess the reasonable costs for
9 conducting a secret ballot of the employees against the party seeking the
10 election. For the purposes of this subsection, the term "costs" shall include
11 amounts expended by the ~~board~~ *secretary* for printing of ballots and
12 necessary postage.

13 Sec. 8. K.S.A. 75-4328 is hereby amended to read as follows: 75-
14 4328. (a) A public employer shall extend to a certified or formally
15 recognized employee organization the right to represent the employees of
16 the appropriate unit involved in meet and confer proceedings and in the
17 settlement of grievances *if grievance procedures are included in the*
18 *conditions of employment*, and also shall extend the right to unchallenged
19 representation status, consistent with ~~subsection (d) of~~ K.S.A. 75-4327(d),
20 during the ~~twelve (12)~~ 12 months following the date of certification or
21 formal recognition.

22 Sec. 9. K.S.A. 75-4329 is hereby amended to read as follows: 75-
23 4329. Every public agency, other than the state, acting through its
24 governing body, may establish procedures, not inconsistent with the
25 provisions of K.S.A. 75-4327 and 75-4328, *and amendments thereto*, and,
26 after consultation with interested employee organizations and employer
27 representatives, may resolve disputes concerning the recognition status of
28 employee organizations composed of employees of such agency. ~~In the~~
29 ~~absence of such procedures, such disputes shall be submitted to the public~~
30 ~~employee relations board in accordance with K.S.A. 75-4327.~~

31 Sec. 10. K.S.A. 2014 Supp. 75-4330 is hereby amended to read as
32 follows: 75-4330. (a) The scope of a memorandum of agreement may
33 extend *only to all matters relating to* conditions of employment, ~~except~~
34 ~~and shall not include any other matter, including, but not limited to,~~
35 proposals relating to: (1) Any subject preempted by federal or state law, or
36 by a municipal ordinance passed under the provisions of section 5 of
37 article 12 of the ~~Kansas~~ *constitution of the state of Kansas*; (2) public
38 employee rights defined in K.S.A. 75-4324, and amendments thereto; (3)
39 public employer rights defined in K.S.A. 75-4326, and amendments
40 thereto; or (4) the authority and power of any civil service commission,
41 personnel board, personnel agency or its agents established by statute,
42 ordinance or special act to conduct and grade merit examinations and to
43 rate candidates in the order of their relative excellence, from which

1 appointments or promotions may be made to positions in the competitive
2 division of the classified service of the public employer served by such
3 civil service commission or personnel board. Any memorandum of
4 agreement relating to conditions of employment entered into may be
5 executed for a maximum period of three years, notwithstanding the
6 provisions of the cash-basis law contained in K.S.A. 10-1102 et seq., and
7 amendments thereto, and the budget law contained in K.S.A. 79-2925 et
8 seq., and amendments thereto.

9 (b) ~~Such memorandum agreement may contain a grievance procedure
10 and may provide for the impartial arbitration of any disputes that arise on
11 the interpretation of the memorandum agreement. Such arbitration shall be
12 advisory or final and binding, as determined by the agreement, and may
13 provide for the use of a fact-finding board. The public employee relations
14 board is authorized to establish rules for procedure of arbitration in the
15 event the agreement has not established such rules. In the absence of
16 arbitrary and capricious rulings by the fact-finding board during
17 arbitration, the decision of that board shall be final. Judicial review shall
18 be in accordance with the Kansas judicial review act.~~

19 (e) ~~Notwithstanding the other provisions of this section and the act of
20 which this section is a part, when a memorandum of agreement applies to
21 the state or to any state agency, the memorandum of agreement shall not be
22 effective as to any matter requiring passage of legislation or state finance
23 council approval, until approved as provided in this subsection. When
24 executed, each memorandum of agreement shall be submitted to the state
25 finance council. Any part or parts of a memorandum of agreement which
26 relate to a matter which can be implemented by amendment of rules and
27 regulations of the secretary of administration or by amendment of the pay
28 plan and pay schedules of the state may be approved or rejected by the
29 state finance council, and if approved, shall thereupon be implemented by
30 it to become effective at such time or times as it specifies. Any part or
31 parts of a memorandum of agreement which require passage of legislation
32 for the implementation thereof shall be submitted to the legislature at its
33 next regular session, and if approved by the legislature shall become
34 effective on a date specified by the legislature.~~

35 Sec. 11. K.S.A. 2014 Supp. 75-4332 is hereby amended to read as
36 follows: 75-4332. (a) Public employers may include in memoranda of
37 agreement concluded with recognized employee organizations a provision
38 setting forth the procedures to be invoked in the event of disputes which
39 reach an impasse in the course of meet and confer proceedings. Such
40 memorandum shall define conditions under which an impasse exists, and if
41 the employer is bound by the budget law set forth in K.S.A. 79-2925 et
42 seq., and amendments thereto, the memorandum shall provide that an
43 impasse is deemed to exist if the parties fail to achieve agreement at least

1 14 days prior to budget submission date.

2 ~~(b) In the absence of such memorandum of procedures, or upon the~~
3 ~~failure of such procedures resulting in an impasse, either party may request~~
4 ~~the assistance of the public employee relations board, or the board may~~
5 ~~render such assistance on its own motion. In either event, if the board~~
6 ~~determines an impasse exists in meet and confer proceedings between a~~
7 ~~public employer and a recognized employee organization, the board shall~~
8 ~~aid the parties in effecting a voluntary resolution of the dispute, and~~
9 ~~request the appointment of a mediator or mediators, representative of the~~
10 ~~public, from a list of qualified persons maintained by the secretary of~~
11 ~~labor, and such appointment of a mediator or mediators shall be made~~
12 ~~forthwith by the secretary.~~

13 ~~(c) All verbal or written information transmitted between any party to~~
14 ~~a dispute and a mediator conducting the proceeding, or the staff of an~~
15 ~~approved program under K.S.A. 5-501 et seq., and amendments thereto,~~
16 ~~shall be confidential communications. No admission, representation or~~
17 ~~statement made in the proceeding shall be admissible as evidence or~~
18 ~~subject to discovery. A mediator shall not be subject to process requiring~~
19 ~~the disclosure of any matter discussed during the proceedings unless all the~~
20 ~~parties consent to a waiver. Any party, including the neutral person or staff~~
21 ~~of an approved program conducting the proceeding, participating in the~~
22 ~~proceeding has a privilege in any action to refuse to disclose, and to~~
23 ~~prevent a witness from disclosing, any communication made in the course~~
24 ~~of the proceeding. The privilege may be claimed by the party or anyone~~
25 ~~the party authorizes to claim the privilege.~~

26 ~~(d) The confidentiality and privilege requirements of this section shall~~
27 ~~not apply to:~~

28 ~~(1) Information that is reasonably necessary to establish a defense for~~
29 ~~the mediator or staff of an approved program conducting the proceeding in~~
30 ~~the case of an action against the mediator or staff of an approved program~~
31 ~~that is filed by a party to the mediation;~~

32 ~~(2) any information that the mediator is required to report under~~
33 ~~K.S.A. 2014 Supp. 38-2223, and amendments thereto;~~

34 ~~(3) any information that is reasonably necessary to stop the~~
35 ~~commission of an ongoing crime or fraud or to prevent the commission of~~
36 ~~a crime or fraud in the future for which there was an expressed intent to~~
37 ~~commit such crime or fraud; or~~

38 ~~(4) any information that the mediator is required to report or~~
39 ~~communicate under the specific provisions of any statute or in order to~~
40 ~~comply with orders of the court.~~

41 ~~(e) If the impasse persists seven days after the mediators have been~~
42 ~~appointed, the board shall request the appointment of a fact-finding board~~
43 ~~of not more than three members, each representative of the public, from a~~

1 list of qualified persons maintained by the secretary of labor. The fact-
2 finding board shall conduct a hearing, may administer oaths, and may
3 request the board to issue subpoenas. It shall make written findings of facts
4 and recommendations for resolution of the dispute and, not later than 21
5 days from the day of appointment, shall serve such findings on the public
6 employer and the recognized employee organization. The board may make
7 this report public seven days after it is submitted to the parties. If the
8 dispute continues 14 days after the report is submitted to the parties, the
9 report shall be made public.

10 (f) (b) If the parties have not resolved the impasse by the end of a 40-
11 day period, commencing with the appointment of the fact-finding board, or
12 by a date not later than 14 days prior to the budget submission date,
13 whichever date occurs first: (1) The representative of the public employer
14 involved shall submit to the governing body of the public employer
15 involved a copy of the findings of fact and recommendations of the fact-
16 finding board, together with the representative's recommendations for
17 settling the dispute; (2) the employee organization may submit to such
18 governing body its recommendations for settling the dispute; (3) the
19 governing body or a duly authorized committee thereof shall forthwith
20 conduct a hearing at which the parties shall be required to explain their
21 positions; and (4) thereafter, the governing body shall take such action as it
22 deems to be in the public interest, including the interest of the public
23 employees involved. The provisions of this subsection shall not be
24 applicable to the state and its agencies and employees.

25 (g) The cost for the fees of court reporters and fact finders provided
26 by the secretary of labor upon the request of the board shall be borne
27 equally by the parties to a dispute.

28 Sec. 12. K.S.A. 2014 Supp. 75-4333 is hereby amended to read as
29 follows: 75-4333. (a) The commission of any prohibited practice, as
30 defined in this section, among other actions, shall constitute evidence of
31 bad faith in meet and confer proceedings.

32 (b) It shall be a prohibited practice for a public employer or its
33 designated representative willfully to:

34 (1) Interfere, restrain or coerce public employees in the exercise of
35 rights granted in K.S.A. 75-4324, and amendments thereto;

36 (2) dominate, interfere or assist in the formation, existence, or
37 administration of any employee organization;

38 (3) encourage or discourage membership in any employee
39 organization, committee, association or representation plan by
40 discrimination in hiring, tenure or other conditions of employment, or by
41 blacklisting;

42 (4) discharge or discriminate against an employee because such
43 employee has filed any affidavit, petition or complaint or given any

1 information or testimony under this act, or because such employee has
2 formed, joined or chosen to be represented by any employee organization;

3 (5) refuse to meet and confer in good faith with representatives of
4 recognized employee organizations as required in K.S.A. 75-4327, and
5 amendments thereto;

6 (6) deny the rights accompanying certification or formal recognition
7 granted in K.S.A. 75-4328, and amendments thereto; *or*

8 ~~(7) deliberately and intentionally avoid mediation, fact-finding, and~~
9 ~~arbitration endeavors as provided in K.S.A. 75-4332, and amendments~~
10 ~~thereto; or~~

11 ~~(8) institute or attempt to institute a lockout.~~

12 (c) It shall be a prohibited practice for public employees or employee
13 organizations willfully to:

14 (1) Interfere with, restrain or coerce public employees in the exercise
15 of rights granted in K.S.A. 75-4324, and amendments thereto;

16 (2) interfere with, restrain or coerce a public employer with respect to
17 management rights granted in K.S.A. 75-4326, and amendments thereto,
18 or with respect to selecting a representative for the purposes of meeting
19 and conferring or the adjustment of grievances;

20 (3) refuse to meet and confer in good faith with a public employer as
21 required in K.S.A. 75-4327, and amendments thereto; *or*

22 ~~(4) deliberately and intentionally avoid mediation, fact-finding and~~
23 ~~arbitration efforts as provided in K.S.A. 75-4332, and amendments thereto;~~
24 ~~or~~

25 ~~(5) engage in a strike.~~

26 (d) (1) It shall be a prohibited practice for a public employee
27 organization to endorse candidates, spend any of its income, directly or
28 indirectly, for partisan or political purposes or engage in any kind of
29 activity advocating or opposing the election of candidates for any public
30 office.

31 (2) For the purposes of this section, "partisan or political purposes"
32 means an act done with the intent or in a way to influence or tend to
33 influence, directly or indirectly, any person to refrain from voting or to
34 vote for or against any candidate for public office at any caucus, political
35 convention, primary or election.

36 (e) In the application and construction of this section, fundamental
37 distinctions between private and public employment shall be recognized,
38 and no body of federal or state law applicable wholly or in part to private
39 employment shall be regarded as binding or controlling precedent.

40 Sec. 13. K.S.A. 2014 Supp. 75-4334 is hereby amended to read as
41 follows: 75-4334. (a) Any controversy concerning prohibited practices
42 may be submitted to the ~~board~~ *secretary*. Proceedings against the party
43 alleged to have committed a prohibited practice shall be commenced

1 within six months of the date of such alleged practice by service upon the
2 accused party by the ~~board~~ *secretary* of a written notice, together with a
3 copy of the charges. The accused party shall have seven days within which
4 to serve a written answer to such charges, unless the ~~board~~ *secretary*
5 determines an emergency exists and requires the accused party to serve a
6 written answer to such charges within 24 hours of their receipt. Hearings
7 on prohibited practices shall be conducted in accordance with the
8 provisions of the Kansas administrative procedure act. If the ~~board~~
9 *secretary* determines an emergency exists, the ~~board~~ *secretary* may use
10 emergency adjudicative proceedings as provided in K.S.A. 77-536, and
11 amendments thereto. A strike or lockout shall be construed to be an
12 emergency. The ~~board~~ *secretary* may use its rulemaking power, as
13 provided in ~~K.S.A. 75-4323~~ *section 1*, and amendments thereto, to make
14 any other procedural rules it deems necessary to carry on this function.

15 (b) The ~~board~~ *secretary* shall either dismiss the complaint or
16 determine that a prohibited practice has been or is being committed. If the
17 ~~board~~ *secretary* finds that the party accused has committed or is
18 committing a prohibited practice, the ~~board~~ *secretary* shall make findings
19 as authorized by this act and shall file them in the proceedings.

20 (c) Any action of the ~~board~~ *secretary* pursuant to subsection (b) is
21 subject to review and enforcement in accordance with the Kansas judicial
22 review act. The procedures for obtaining injunction and allied remedies
23 shall be as set forth in the code of civil procedure, except that the
24 provisions of K.S.A. 60-904, and amendments thereto, shall not control
25 injunction actions arising out of public employer-employee relations under
26 this act.

27 (d) If there is an alleged violation of either ~~subsection (b)(8) or (c)(5)~~
28 ~~of K.S.A. 75-4333(b)(7) or (c)(4)~~, and amendments thereto, the aggrieved
29 party is authorized to seek relief in district court in the manner provided
30 for the ~~board~~ *secretary* in subsection (c) while proceedings on such
31 prohibited practices are pending before the ~~board~~ *secretary*. Any ruling of
32 the district court shall remain in effect until set aside by the court on
33 motion of the parties or of the ~~board~~ *secretary* or upon review of the
34 ~~board's~~ *secretary's* order as provided by subsection (c).

35 Sec. 14. K.S.A. 75-4335 is hereby amended to read as follows: 75-
36 4335. This act, except for K.S.A. 75-4322, ~~75-4323~~, 75-4324, 75-4325,
37 75-4326, 75-4327, 75-4328, 75-4333 and 75-4334, *and amendments*
38 *thereto*, shall be inapplicable to any public employer, other than the state
39 and its agencies which, acting through its governing body, has adopted by
40 ordinance or resolution its own provisions and procedures which have
41 been submitted to the ~~board~~ *secretary* by such public employer and as to
42 which there is in effect a determination by the ~~board~~ *secretary* that such
43 provisions and procedures and the continuing implementation thereof are

1 reasonably equivalent to the provisions and procedures set forth in this act
2 with respect to the state.

3 Sec. 15. K.S.A. 75-4337 is hereby amended to read as follows: 75-
4 4337. (a) Every employee organization operating in the state of Kansas
5 and having 100 or more members shall file an annual report with the
6 secretary of state on or before April 15, showing the financial condition of
7 the employee organization on the December 31 next preceding the date of
8 filing or at the close of business on the last day of the organization's fiscal
9 year next preceding the date of filing. Each annual report filed under this
10 section shall be accompanied by a filing fee of \$5. The secretary of state
11 may upon showing of reasonable cause grant an extension of time for
12 filing of annual report.

13 (b) The annual report shall be in such form as the ~~board~~ *secretary*
14 shall prescribe and shall include:

15 (1) The name of the employee organization;

16 (2) the location and mailing address of its office;

17 (3) the name and title of each of its officers and registered business
18 agents, together with the salaries, wages, bonuses and other remuneration
19 paid each, and mailing address of each;

20 (4) the date of the regular election of officers of such employee
21 organization;

22 (5) the rate of its initiation fees, dues, assessments and any other
23 periodic payments required of its members; and

24 (6) an audited statement of the income, expenditures, assets and
25 liabilities of the employee organization.

26 (c) In lieu of filing an annual report in the form prescribed by the
27 ~~board~~ *secretary* under subsection (b) ~~of this section~~, the employee
28 organization may file copies of the reports required to be filed with the
29 United States department of labor by the federal labor management
30 reporting and disclosure act of 1959, 29 U.S.C.A. § 431, et seq., as
31 follows:

32 (1) By having on file with the secretary of state a copy of the labor
33 organization information report form LM-1 which is currently on file with
34 the United States department of labor; and

35 (2) by filing annually as required in subsection (a) ~~of this section~~, a
36 copy of the labor organization annual report form LM-2 or form LM-3
37 which is filed with the United States department of labor and covers a
38 reporting period specified in subsection (a).

39 (d) Every employee organization which has filed an annual report as
40 a labor organization under the provisions of K.S.A. 44-806, and
41 amendments thereto, shall be deemed to have fully satisfied the
42 requirements of this section and shall not be required to file an annual
43 report under this section.

1 Sec. 16. K.S.A. 2014 Supp. 75-4338 is hereby amended to read as
2 follows: 75-4338. (a) It shall be a prohibited practice for any professional
3 employees' organization, as defined in K.S.A. 72-5413, and amendments
4 thereto, or public employee organization, as defined in K.S.A. 75-4322,
5 and amendments thereto, to use ~~any union~~ dues, fees, money or other
6 assessments ~~deducted from a member's paycheck~~ for the purpose of
7 engaging in partisan or political purposes as defined in subsection (d). A
8 professional employees' organization or public employee organization may
9 not require any contribution to a candidate, personal campaign committee,
10 political action committee, registered political party, or political fund as a
11 condition of membership or participation in the professional employees'
12 organization or public employee organization.

13 (b) (1) A professional employees' organization or a public employee
14 organization wishing to make expenditures for partisan or political
15 purposes shall establish a political fund.

16 (2) Each professional employees' organization or public employee
17 organization that establishes a political fund shall:

18 (A) Maintain the political fund as a separate, segregated account apart
19 from any account containing money received by a professional employees'
20 organization or a public employee organization as union dues;

21 (B) ensure that each contribution to the political fund is voluntary;
22 and

23 (C) establish the political fund as a political action committee.

24 (3) (A) A professional employees' organization or a public employee
25 organization may only make expenditures for partisan or political purposes
26 from a political fund established in accordance with this section.

27 (B) A professional employees' organization or a public employee
28 organization may not expend union dues for partisan or political purposes
29 or transfer union dues to a political fund.

30 (c) (1) Nothing in this section precludes a professional employees'
31 organization or a public employee organization from making expenditures
32 of union dues to communicate directly with its own members about
33 political candidates or political issues.

34 (2) Nothing in this section precludes a professional employees'
35 organization or public employee organization from making expenditures of
36 union dues either for the establishment of a political fund or to solicit
37 contributions from its members to a political fund.

38 (d) *The use by a board of education, as defined in K.S.A. 72-5413,*
39 *and amendments thereto, of public school resources to assist a*
40 *professional employees' organization, as defined in K.S.A. 72-5413, and*
41 *amendments thereto, in collecting union dues from wages of professional*
42 *employees, as defined in K.S.A. 72-5413, and amendments thereto, is*
43 *prohibited.*

1 (e) *The use by a public agency or public employer, as defined in*
2 *K.S.A. 75-4322, and amendments thereto, of the public agency or public*
3 *employer's resources to assist an employee organization, as defined in*
4 *K.S.A. 75-4322, and amendments thereto, in collecting union dues from*
5 *wages of public employees, supervisory employees or confidential*
6 *employees, as such employees are defined in K.S.A. 75-4322, and*
7 *amendments thereto, is prohibited.*

8 (f) (1) "Partisan or political purposes" means an act done with the
9 intent or in a way to influence or tend to influence, directly or indirectly,
10 any person to refrain from voting or to vote for or against any candidate
11 for public office at any caucus, political convention, primary, or election.

12 (2) "Political fund" means a separate segregated fund established by a
13 professional employees' organization or a public employee organization
14 for partisan and political purposes that meets the requirements of this
15 section.

16 (3) "Union dues" means dues, fees, money, or other assessments
17 required as a condition of membership or participation in a professional
18 employees' organization or a public employee organization.

19 ~~(e)~~ (g) This section as it relates to public employee organizations
20 shall be supplemental to the provisions of K.S.A. 75-4333, and
21 amendments thereto, and shall be enforced pursuant to the provisions of
22 K.S.A. 75-4334, and amendments thereto.

23 ~~(f)~~ (h) This section as it relates to professional employees'
24 organizations shall be supplemental to the provisions of K.S.A. 72-5430,
25 and amendments thereto, and shall be enforced pursuant to the provisions
26 of K.S.A. 72-5430a, and amendments thereto.

27 New Sec. 17. (a) The use by a board of education of public school
28 resources to make payroll deductions from the wages of a professional
29 employee, administrative employee or other employee for voluntary
30 contributions of the employee which are not for an employee benefit
31 program are prohibited.

32 (b) The use by a state agency of the state agency's resources to make
33 payroll deductions from the wages of an officer or employee of the state
34 agency for voluntary contributions of the officer or employee which are
35 not for an employee benefit program are prohibited.

36 (c) As used in this section:

37 (1) "State agency" means any state office or officer, department,
38 board, commission, institution, bureau or any agency, division or unit
39 within any office, department, board or commission of the executive,
40 legislative or judicial branches of state government or any other state
41 authority;

42 (2) "Board of education" means the state board of education, the
43 board of education of any school district, the board of control of any area

1 vocational-technical school and the board of trustees of any community
2 college.

3 Sec. 18. K.S.A. 75-4321, 75-4322, 75-4324, 75-4326, 75-4328, 75-
4 4329, 75-4335 and 75-4337 and K.S.A. 2014 Supp. 75-4323, 75-4327, 75-
5 4330, 75-4332, 75-4333, 75-4334, 75-4338 and 75-5713 are hereby
6 repealed.

7 Sec. 19. This act shall take effect and be in force from and after its
8 publication in the statute book.