

**SUMMARY ORDERS IN KANSAS / THE NEW CONSUMERISM  
PROCEDURE**

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William W. Sneed, Esq.  
(785) 233-1446

Insurance companies spend millions of dollars responding to the various consumer inquiries sent to them by the states' insurance departments on a myriad of ongoing issues. Each state has its own quirks and procedures but in Kansas a new form of consumerism is being put out by the Kansas Insurance Department.

Typically in Kansas, a consumer will file a complaint with the Insurance Department, the Insurance Department will send a form letter to the company requesting reasons for its position and all background and support thereof, and then potentially an onslaught of letters between the Department and the insurance company, will ensure each trying to convince the other that they are correct. Historically, this is referred to as the regulatory approach, i.e., the insurance department is a regulator not a judge and jury.

However, the Kansas Insurance Department is moving towards prosecutorial mode, i.e., they are attempting to act as judge and jury on various consumer issues by utilizing a cobbled up array of state statutes to get them from A to B.

Although the Kansas Insurance Department might wish to pat itself on its back for a new age of consumerism, the road that they are going down is full of potential dangers and in this writer's opinion, in violation of the true intent of the statute.

Kansas Law, under its Administrative Procedures Act, allows state agencies to utilize summary proceedings, i.e., issuing an order prior to any formal hearing, if 1) "the use of those proceedings in the circumstances does not violate any provision of law;" and 2) "the protection of the public interest does not require the state agency to give notice and an opportunity to participate in person other than the parties."<sup>1</sup> In essence, this statute allows the Kansas Insurance Department to issue a Summary Order, which will outline the statutory authority for their regulatory basis, the facts as they wish to promote them, and the underlying "Order," which imposes an administrative penalty. The constitutional savings on this particular statute is that it does allow the parties, within 15 days, to request a hearing, and if said hearing is requested, the Summary Order is vacated<sup>2</sup>. What the Department then claims is that since the process can withstand a constitutional attack, their use of the Summary Order is appropriate. The Department has misconstrued K.S.A. 77-537. This is not a constitutional issue - it is a question of whether the Department has exceeded its statutory authority.

Administrative agencies are creatures of statute; they may only act within the scope of authority granted by their authorizing statutes.<sup>3</sup>

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**Endnotes**

1. K.S.A. 77-537(a)
2. K.S.A 77-537(b)

**FEDERATION OF REGULATORY COUNSEL, INC.**

3. *Kansas Industrial Consumers Group, Inc vs. State Corporation Commission of State of Kansas*, 36Kan. App. 2nd 83, 92, 138 P. 3d, 338 (2006).