

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

Room 152-S—Statehouse
July 23, 2012

Members Present

Senator Vicki Schmidt, Chairperson
Senator Oletha Faust-Goudeau
Senator Ralph Ostmeyer
Senator Tim Owens
Senator Allen Schmidt
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer
Representative Caryn Tyson (*via* telephone conference)
Representative Valdenia Winn

Member Absent

Representative Carl Holmes, Vice-chairperson

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Katherine McBride, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Conferees

Jose Castillo, Department of Labor
Brian Dempsey, Department for Children and Families
Kevin Jones, Kansas Department of Wildlife, Parks and Tourism
Dorothy Halley-Stucky, Office of the Attorney General
Alexandra Blasi, Board of Cosmetology
Ed Bryan, Department of Commerce
Joseph House, Board of Emergency Medical Services
Christina Morris, Kansas Pharmacy Board

Cheryl Magathan, Real Estate Appraisal Board
Patricia Scalia, State Board of Indigents' Defense Services
Eric Williams, Kansas Commission on Peace Officers' Standards and Training

Others Present

Scott Heidner, Kansas Self Insurers Association
Sean Miller, Capitol Strategies
Page Routhier, Hein Law Firm
Robin Jennison, Secretary, Wildlife, Parks and Tourism
Chiquita Coggs, Kansas Board of Cosmetology
Gary Steed, Kansas Commission on Peace Officers' Standards and Training
Berend Koops, Merck
Meagan Bottenberg, Bottenberg & Associates
Merrill J. Hicklin Befort, Kansas Department of Commerce
Derek Hein, Hein Law Firm
Sally Pritchett, Kansas Real Estate Appraisal Board
Kevin Barone

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m. She recognized Jose Castillo to address the rule and regulation noticed for hearing by the Department of Labor. KAR 51-18-4, time schedule for briefs on review, summary calendar.

Mr. Castillo stated, in an effort to expedite the appeals process, the Department is reducing the time frame for appellate briefs to be submitted to the Appeals Board. After an application for review has been filed, the appellant's brief shall be submitted to the Appeals Board within 20 days, rather than 30 days. Thereafter, appellant's briefs shall be submitted within 10 days, rather than 20 days.

Committee members questioned the reason for the reduction in time and requested that information be provided to the Committee on the backlog of cases and why this regulation change is needed. Mr. Castillo stated he would get the information to the Committee. Staff noted, in KAR 51-18-4(3), the time limit had been removed altogether and asked whether this was the intent.

Brian Dempsey, Deputy Director, was recognized to speak to the proposed rule and regulation noticed for hearing by the Kansas Department for Children and Families (DCF) (Attachment 1). KAR 30-46-10, definitions. Mr. Dempsey stated the rule and regulation was approved on a temporary basis on June 1, 2012.

In response to a question from the Chairperson, Mr. Dempsey stated this regulation was identical to the temporary one that was approved. Staff noted the history section should be updated to reflect KSA 38-2225. Mr. Dempsey stated they would review the section.

Chairperson Schmidt requested action by the Committee be taken on the minutes for the June 1, 2012, meeting. *Senator Owens moved the minutes be approved as presented; Representative Pauls seconded the motion. The motion carried.*

The Chairperson welcomed Kevin Jones, Director of Law Enforcement, to address the proposed rules and regulations noticed for hearing by the Department of Wildlife, Parks and Tourism. KAR 115-14-11, falconry; general provisions; KAR 115-14-12, falconry; permits,

applications, and examinations; KAR 115-14-13, falconry; facilities, equipment, care requirements, and inspections; KAR 115-14-14, falconry; taking, banding, handling, transporting, and possessing raptors; KAR 115-14-15, falconry; transfers, trading, and sale of raptors; and KAR 115-18-1, wildlife rehabilitation permit; application, reporting, and general provisions. The following regulations would be revoked: KAR 115-14-1 through KAR 115-14-6 and KAR 115-14-8 through KAR 115-14-10.

The Committee had no questions regarding these rules and regulations.

Chairperson Vicki Schmidt recognized Dorthy Halley-Stucky to speak to the proposed rules and regulations noticed for hearing by the Office of the Attorney General. KAR 16-12-1, scope; KAR 16-12-2, definitions; KAR 16-12-3, continuing education; KAR 16-12-4, program requirements; KAR 16-12-5, domestic violence offender assessment; KAR 15-12-6, temporary permit, application; KAR 15-12-7, initial certification, application; KAR 16-12-8, renewal certification, application; KAR 16-12-9, certification reinstatement, application; and KAR 16-12-10, evaluating and monitoring certified batterer intervention programs.

Ms. Halley-Stucky stated the rules and regulations were the result of SB 304 passed by the 2012 Legislature.

Staff noted, in KAR 16-12-2, the definitions of “words or phrases used in this article or in the Batterer Intervention Program Certification Act (“Act”) but not defined in this regulation, shall be the same definition as specified in the Act or in KSA 21-5111.” There are terms defined in both of these and they need to be checked to be sure they are using the same definition. A Committee member pointed out on page 3,(e)(11), the term “age” should be added to make it identical to the discrimination law terms. In KAR 16-12-6, (2) the word “Kansas” should be removed. The Committee thanked the Office of the Attorney General for its staff's work on these rules and regulations.

Alexandria Blasi was welcomed by the Chairperson to address the rules and regulations noticed for hearing by the Board of Cosmetology. KAR 69-12-3, expiration of licenses, renewals, reinstatements; KAR 69-13-4, refusal to allow inspection; KAR 69-15-9, renewal and reactivation of licenses; KAR 69-15-12, continuing education for license renewal; KAR 69-15-13, reporting continuing education; KAR 69-15-15, permanent color technician, tattoo artist, and body piercing, technician practice standards, restrictions; and KAR 69-15-16, facility standards.

A Committee member was concerned that in KAR 69-13-4, the terminology was too broad and could refer to any individual who happened to be on the premises. In response to a Committee member's question, Ms. Blasi stated, in KAR 69-15-13, there was no reduction in the requirements for continuing education. Staff noted the history section should be updated to include KSA 74-2702a as an authorizing section in all of these. The Committee raised questions about KAR 69-15-15, in the retention of records, the time frame for destroying records since there were two sets which would have to be destroyed. The Committee members felt there were some significant privacy issues that should be addressed before going forward. Also there were questions concerning HIPAA privacy issues. It was the recommendation of the Committee that KAR 69-15-15 and KAR 69-15-16 not be implemented because of the Committee's concerns.

Ed Bryan was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce. KAR 110-6-1 through KAR 110-6-7 would be revoked. KAR 110-6-8, definitions; KAR 110-6-9, application; KAR 110-6-11, certification period (CP), and KAR 110-6-12, training and education requirement.

Mr. Bryan stated the rules and regulations are proposed to bring greater clarity and better organization to the High Performance Incentive Program Act.

A Committee member asked for a breakdown to be provided to the Committee showing how many of the 371 companies using this Program in the last fiscal year were Kansas companies and not from other states, and the return on the state's investment. Staff noted, in KAR 110-6-9, the last sentence be amended by adding the words "the Secretary" between "by" and "other." In KAR 110-6-11, staff stated the history section be updated by adding KSA 74-50,119 as an authorizing statute.

Chairperson Vicki Schmidt recognized Joseph House, Executive Director, to address the rule and regulation noticed for hearing by the Board of Emergency Medical Services. KAR 109-3-5, advanced emergency medical technician, authorized activities.

The Committee had no questions concerning this rule and regulation.

Christina Morris was welcomed by the Chairperson to address the rules and regulations noticed by the Kansas Pharmacy Board. KAR 68-21-1, definitions; KAR 68-21-2, electronic reports; and KAR 68-21-7, drugs of concern.

A Committee member questioned why KAR 68-21-1 (k) (1) did not list a non-driver's license photo identification. Staff pointed out the term "Board" was defined in the statute and would not need to be included in the rule and regulation. In KAR 68-21-2 (c), staff noted, the reference to "format established by the American society for automation in pharmacy, dated no earlier than 2007, version 4, 4 release 1," could be an unlawful delegation of authority with the language that is used.

Staff recommended the history section be updated. In KAR 68-21-7, staff suggested paragraphs (3) and (4) should be clarified by stating "ephedrine, its salts, its optical isomers, or salts of optical isomers."

Cheryl Magathan was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-20-1, definitions; KAR 117-20-2, registration; KAR 117-20-3, registration renewal; KAR 117-20-4, fees; KAR 117-20-5, certificate of registration; KAR 117-20-6, change of information; and KAR 117-20-7, certification of annual review.

Staff asked a question on KAR 117-20-1, (a) "applicant" and how "good moral character" applied to a company seeking a registration. A Committee member had several questions concerning KAR 117-20-2 (b) (1) and the requirement that fingerprints were not to be acquired more than 120 days before submitting the application. The member stated that she had never seen a timeline on fingerprinting. Ms. Magathan stated this was because a waiver form needs to be signed by the entity taking the fingerprints. A Committee member recommended KAR 117-20-7, subsections (a), (b), and (c) be clarified.

Chairperson Vicki Schmidt recognized Patricia Scalia, Executive Director, to speak to the proposed rule and regulation noticed for hearing by the State Board of Indigents' Defense Services. KAR 105-3-2, eligibility to serve.

Ms. Scalia stated, because of a potential death penalty case to be heard and a conflict of interest with the team who defend capital murder cases, the Board needs to find another qualified team. The Committee members had no questions on this rule and regulation.

The Chairperson recognized Raney Gilliland, Kansas Legislative Research Department, to discuss the letter from the Office of the Attorney General dated June 28, 2012, concerning delegation of authority related to KAR 117-8-1, by the Kansas Real Estate Appraisal Board (Attachment 2). Mr. Gilliland stated this letter was in response to a request the Committee sent to the Office of the Attorney General after the June meeting of this Committee.

Eric Williams was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Commission on Peace Officers' Standards and Training. KAR 106-1-1 through KAR 106-1-8, KAR 107-1-1 through 107-1-5, KAR 107-2-1, and KAR 107-3-1 are revoked. KAR 106-2-1, general definitions; KAR 106-2-2, certain misdemeanors constituting grounds for disqualification of applicants; KAR 106-2-2a, certain misdemeanors constituting grounds for denial or discipline; KAR 106-2-3, unprofessional conduct; KAR 106-2-4, good moral character; KAR 106-3-1, provisional certificate conditioned on attendance at next available basic training course; KAR 106-3-2, provisional certification; working as officer during basic training course; KAR 106-3-3, standards for approval of psychological testing; KAR 106-3-4, verification of high school equivalence; KAR 106-3-5, determination of work hours for part-time certification; KAR 106-3-6, oath required for certification; and KAR 106-4-1, approval of training schools.

Staff noted in KAR 106-2-2, the history section needs to be updated. In KAR 106-2-2a subsection (a) needs to clarify that any of the listed misdemeanor violations of statutes would be an offense. A Committee member had concern on item (a)(2) related to officers and interference with parental custody. Mr. Williams stated each of these would be reviewed by the Commission. Staff noted in KAR 106-2-3 (a), there is no definition of "reasonably would cause disrepute." Committee members were concerned the terms used in KAR 106-2-4, (a)(3), (4), and (5) were vague and perhaps terms military personnel use could be clearer. Mr. Williams stated in KAR 106-3-4 (a), "certificate" will be changed to "credential." Staff recommended in KAR 106-3-5, line three, the words "total of" be inserted between "cumulative" and "number." In KAR 106-4-1, staff suggested KSA 74-5607 be added to the history section and cleanup be done in other parts of the history section..

Chairperson Schmidt stated the next meeting would be September 17, 2012. The meeting was adjourned at 12:20 p.m.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Department of Wildlife, Parks and Tourism. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning falconry, general provisions; falconry, permits, applications, and examinations; falconry, facilities, equipment, care requirements, and inspections; falconry, taking, banding, transporting, and possessing raptors; falconry, transfers, trading, and sale of raptors; wildlife rehabilitation permit, application, reporting and general provisions; and revocations regarding falconry. After discussion, the Committee had no comment.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning the schedule for briefs on review, summary calendar. After discussion, the Committee had the following comments.

KAR 51-18-4. The Committee requests information on the procedure and timelines for submitting a reply brief under paragraph (a)(3).

Request. The Committee requests information on whether there is a backlog of cases before the Workers Compensation Board and, if there is a backlog, explain the extent of the backlog and the reason or reasons for the existence of the backlog.

Kansas Department of Children and Families (formerly SRS). The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning d. After discussion, the Committee had the following comment.

KAR 30-46-10. The Committee suggests the agency amend the history section by replacing K.S.A. 39-708c, a general authorization statute not a part of the Revised Kansas Code for Care of Children , with K.S.A. 38-2225, which is part of the Revised Kansas Code for Care of Children.

Kansas Board of Cosmetology. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning of licenses, renewals, reinstatements; refusal to allow inspection; and reactivation of licenses; continuing education for license renewal; reporting continuing education; permanent color technician, tattoo artist, and body piercing technician practice standards, restrictions; and facility standards. After discussion, the Committee had the following comments.

KAR 69-15-12 and 69-15-13. The Committee suggests the agency add 74-2702a to the history section as the authorizing section to be consistent with the history sections of other rules and regulations in this set.

KAR 69-15-15 and 69-15-16. Due to concerns regarding confidentiality of private health information under HIPAA, the Committee requests that the agency not proceed to adopt these regulations until the issues involving security and destruction of health information are adequately understood. In addition, the Committee is particularly concerned with the collection of certain types of health information from individuals and the absence of guidance to regulated parties on protecting that information. Please advise the Committee of what the agency determines on these issues.

KAR 69-15-15. The Committee requests information indicating the authorization in subsection (b) for obtaining medical information from “protected classes” of individuals or consulting with their physicians in particular regarding persons with HIV. In addition, the Committee asked if HIV should be listed in subsection (a) of this regulation.

Kansas Department of Commerce. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; application; certification of a worksite; certification period (CP); training and education requirement; and revocations. After discussion, the Committee had the following comments.

KAR 110-6-9. The Committee suggests the addition of “by the secretary” at the end of paragraph (b).

KAR 110-6-11. The Committee wonders why K.S.A. 2011 Supp. 74-50,115, which is part of the Kansas Enterprise Zone Act, is listed in the history section for this rule and regulation. The Committee suggests the agency replace K.S.A. 2011 Supp. 74-50,115 with K.S.A. 2011 Supp. 74-50,132. If the agency intends to retain K.S.A. 2011 Supp. 74-50,115 in the history section, then consider adding K.S.A. 74-50,119 in the authorizing section of the history section since this statute authorizes rules and regulations under the Kansas Enterprise Zone Act.

Request. The Committee requests specific information on the return on investment that the state has realized to date from the High Performance Incentive Program.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning an emergency medical technician, authorized activities. After discussion, the Committee had no comment.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; registration; registration renewal; fees; certificate of registration; change of information; and certification of annual review. After discussion, the Committee had the following comments.

KAR 117-20-1. The Committee is concerned about who is the applicant for an appraisal management company which is a corporation and how the agency will determine whether an appraisal management company which is a corporation can be of good moral character as part of an application process for renewal. The Committee suggests the agency clarify this rule and regulation.

KAR 117-20-2 and 117-20-3. The Committee also is concerned as to how the 120 days was determined in requiring that the individual is not to be fingerprinted more than 120 days before submitting the application for initial registration or renewal thereof.

KAR 117-20-7. The Committee finds this rule and regulation is unclear regarding the identity of the reviewer of the appraisal reports. The Committee suggests the agency clarify this rule and regulation.

Kansas State Board of Indigents' Defense Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning eligibility to serve. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; electronic reports; and drugs of concern. After discussion, the Committee had the following comments.

KAR 68-21-1. The Committee believes it is unnecessary to define the term "board" since it is defined by statute. In addition, the Committee believes the agency should consider utilizing drivers' license and state identification numbers in order to track patient transactions under the Prescription Monitoring Program Act.

KAR 68-21-2. In subsection (c), there is a reference to “secure file transfer protocol in the electronic format established by the American Society for Automation in Pharmacy, dated no earlier than 2007, version 4, release 1.” The Committee asks where this document is adopted by reference and, if formats dated after 2001, version 4, release 1 are allowed, whether this constitutes an unlawful delegation of legislative authority.

KAR 68-21-7. Please review the language in subsection (a), paragraphs 3 and 4, to determine if these are articulated in the proper manner. Should the phrase read “ephedrine, its salts, optical isomers and salts of optical isomers”? The Committee suggests the agency clarify this rule and regulation.

Kansas Office of the Attorney General. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning scope; definitions; continuing education; program requirements; domestic violence offender assessment; temporary permit, application; initial certification, application; renewal certification, application; certification reinstatement, application; and evaluating and monitoring certified batterer intervention programs. After discussion, the Committee had the following comments.

KAR 16-12-2. In paragraph (e)(11), the Committee suggests the agency add age discrimination as unprofessional conduct. In addition, the Committee suggests that in subsection (a), the definition of the term “act” be made clear as to whether the term “act” is referring to a failure or omission to take an action as defined in K.S.A. 21-5111 or to the Batterer Intervention Certification Act.

KAR 16-12-6. The Committee suggests removing “Kansas” from paragraph (g)(2), as “Kansas” is not part of the Board's statutory name. Similar changes should be made in these rules and regulations where necessary.

Comment. The Committee commended the agency on the work it undertook in developing these regulations.

Kansas Commission on Peace Officers' Standards and Training. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; certain misdemeanors constituting grounds for on of applicants; certain misdemeanors constituting grounds for denial or discipline; unprofessional conduct; good moral character; provisional certificate conditioned on attendance at next available basic training course; provisional certification, working as officer during basic training course; standards for approval of psychological testing; verification of high school equivalence; determination of work hours for part-time certification; oath required for certification; approval of training schools; and revocations. After discussion, the Committee had the following comments.

KAR 106-2-2. The Committee requests the agency review the title of this rule and regulation which refers only to misdemeanors while some of the statutes referenced, such as K.S.A. 2011 Supp. 21-5801 pertaining to theft, refer to offenses which could be classified as either a misdemeanor or a felony. The Committee suggests the agency clarify this rule and regulation.

KAR 106-2-2a. Consider clarifying the lead-in language to the list in subsection (a) by changing the wording from “would constitute any of the following misdemeanor offenses” to “would constitute misdemeanors offenses under any of the following statutes.”

KAR 106-2-3. The Committee would like to know the criteria for what would “cause disrepute to the law enforcement profession, the appointing authority, or the officer.” Please consider adding criteria used to make this determination.

KAR 106-2-4. The Committee finds that some of the terms used in the list, such as “fairness,” “credibility,” and “respect,” are nebulous, making a determination of whether an act constitutes “good moral character” rather subjective. The Committee suggests clarification or elimination of these terms.

KAR 106-3-4. In subsection (a), the word “certificate” should be replaced with the word “credential” in order to conform with the wording by the State Board of Regents.

KAR 106-3-5. The Committee believes that the words “total of” should be added after the word “cumulative” for clarity.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by the Committee on:

September 17, 2012

(Date)