

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 5, 2011
Room 548-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

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
Judy Glasgow, Committee Assistant

Conferees

Vera Van Bruggen, Kansas Department on Aging
Greg Reser, Kansas Department on Aging
Cheryl Magathan, Kansas Real Estate Appraisal Board
John Wine, Kansas Insurance Department
Julene Miller, Kansas Board of Regents
Jacqueline Johnson, Kansas Board of Regents'
Marc Wilson, Kansas Office of the Securities Commissioner
Sarah Byrne, Kansas Department of Revenue
Richard Cram, Kansas Department of Revenue
Robert Stiles, Kansas Department of Health and Environment
Marla Rhoden, Kansas Department of Health and Environment
Phil Griffin, Kansas Department of Health and Environment
Christina Morris, Kansas Pharmacy Board
Randy Forbes, Kansas Pharmacy Board
Patrick Martin, Kansas Racing and Gaming Commission
Darla Price, Department of Commerce

Others Present

Derek Hein, Hein Law Firm
Matt Casesy, GBA
Joe Ewen, Kansas Association of Homes and Services for the Aging
Laurie Hermes, Kansas FAIR Plan
Rita Hiebsch, Kansas FAIR Plan
Rick Fleming, Securities Commission
Michele Butler, Capitol Strategies
Sabrina Wells, Kansas Insurance Department
Scott Gates, State Treasurer's Office
Ken Abitz, Kansas Insurance Department
Madi Vannaman, Kansas Board of Regents'
Jonathan Krueger, Kansas Board of Regents'
Brenda Krall, Kansas Department of Health and Environment
Brenda Walker, Kansas Department of Health and Environment
Susan Vogel, Kansas Department of Health and Environment
Berend Koops, Hein Law Firm

Morning Session

Chairperson Schmidt called the meeting to order at 9:00 a.m.

The Chairperson asked for action on the Committee's minutes from the November 8, 2010, meeting. *Senator Ostmeyer moved that the minutes be approved as presented; Senator Lee seconded the motion; the motion carried.*

The Chairperson welcomed Vera Van Bruggen, Kansas Department on Aging, to review changes to rules and regulations previously heard by this Committee on September 20, 2010, with respect to nursing homes. Ms. Van Bruggen stated that the changes were made taking into account the comments of the Committee members at the September meeting and comments from the public hearing. These rules and regulations will become final on January 7, 2011.

Committee members recommended that the agency let these rules and regulations go into effect and then amend them by including a definition of "concentrated livestock operations" as used in KAR 26-40-301. The Chairperson suggested that Ms. Van Bruggen notify staff what the definition is to be and where it will be inserted in the rules and regulations. Ms. Van Bruggen stated that this could be done.

Cheryl Magathan was recognized by the Chairperson to speak on the proposed rule and regulation notice for hearing by the Kansas Real Estate Appraisal Board. KAR 117-7-1, fees.

Ms. Magathan stated that, in order to adequately fund the agency, the increase in fees for original and renewal license/certification is necessary. There were no questions from the Committee.

The Chairperson welcomed John Wine, Staff Attorney, to address the proposed rules and regulations notice for hearing by the Kansas Insurance Department (Attachments 1, 2, and 3) KAR 131-1-1, definition of purchase; KAR 40-1-37, audited financial reports; filing requirements; and KAR 40-3-33, revoked.

Mr. Wine stated that KAR 131-1-1 is being proposed by the Committee on Surety Bonds and Insurance and defines “purchase” for the purpose of clarifying when insurance connected to the lease of property is subject to the Committee’s oversight and approval. He responded to questions of a general nature from Committee members.

The Chairperson recognized Julene Miller, General Counsel, to speak of the proposed rule and regulation notice for hearing by the Kansas Board of Regents (Attachment 4) KAR 88-30-1, definitions.

Ms. Miller stated that this regulation is being amended to extend eligibility for student health insurance to student employees who are enrolled only in on-line courses if their work stations are on the main campus of the employing university. There were no questions from the Committee.

Jacqueline Johnson was welcomed by the Chairperson to speak on the proposed rule and regulation notice for hearing by the Kansas Board of Regents, KAR 88-28-1, definitions.

Ms. Johnson stated that this regulation is being amended to allow approval of baccalaureate degrees with a minimum of 120 credit hours instead of the current 124 hours.

In response to questions from the Committee members, Ms. Johnson stated department heads will have to review the hours required for specific degrees and make changes in each department, and this will be done over the next five to ten years.

Marc Wilson was recognized by the Chairperson to speak on the proposed rules and regulations notice for hearing by the Kansas Office of the Securities Commission. KAR 81-2-1, forms and adoptions by reference; KAR 81-3-6, dishonest or unethical practices of broker-dealers and agents; and KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers.

Mr. Wilson stated that the Director of Veteran's Services for the Kansas Commission on Veteran's Affairs brought the issue to the attention of the Commission. The U.S. Department of Veteran's Affairs (V.A.) prohibits charging veterans a fee for obtaining benefits unless the person charging the fee is an authorized agent and has a written agreement for fees filed with the V.A. There were no questions for Mr. Wilson.

The Chairperson recognized Sarah Byrne to address the proposed rules and regulations notice by the Department of Revenue, Division of Alcoholic Beverage Control. KAR 14-6-1, original package; change of original packages or labels; KAR 14-10-5, definitions; KAR 14-10-6, KAR 14-10-7, KAR 14-10-8, KAR 14-10-9, and KAR 14-10-10, REVOKED; KAR 14-10-11, value-added packages; KAR 14-10-12, recordkeeping requirements; KAR 14-10-13, KAR 14-10-14; and KAR 14-10-15 REVOKED; KAR 14-10-16, defective liquor containers; KAR 14-10-17, trade practices; KAR 14-10-20, outdoor advertising specialty items; KAR 14-10-21, items furnished by industry members; limits; KAR 14-10-22, display enhancers; KAR 14-10-23, point-of-sale advertising material; KAR 14-13-12, defective liquor containers; repurchase by retailer; KAR 14-14-6a, sampling; product promotions; and KAR 14-14-6b, educational seminars.

Staff suggested that the definition for malt beverage be included. Staff stated that the history section needs to be amended to include KSA 41-331 and KSA 41-1127, to show it is part of the Alcoholic Beverage Act. Staff also said that if a federal regulation dated later than January 3, 2005, was being used, it would be necessary to update the references. Committee members had concerns that the Kansas regulations were more strict than the federal

regulations. Staff noted in KAR 14-10-23 and KAR 14-10-21 the C.F.R. should be a cross reference to KAR 14-10-17 as done in KAR 14-10-22. Ms. Byrne stated that there was an error on the economic impact statement of KAR 14-114-6b, that would be corrected before the public hearing.

Richard Cram was introduced by the Chairperson to speak on the proposed rules and regulations notice for hearing by the Department of Revenue. KAR 92-19-3, REVOKED; KAR 92-19-3a, credit sales, conditional sales, and other sales and service transactions that allow deferred payment; KAR 92-19-3b, allowances for bad debts; KAR 92-19-3c, repossessed goods; KAR 92-19-10, REVOKED; KAR 92-19-16a, gifts, premiums, prizes, coupons, and rebates; KAR 92-19-16b, KAR 92-19-40, and KAR 92-19-42, REVOKED; KAR 92-19-49b, goods returned when a sale is rescinded; KAR 92-19-55b, operating leases; KAR 92-10-59, private letter rulings; and KAR 92-19-73, membership fees and dues.

A Committee member noted that in KAR 92-19-3a, (a)(1)(B) should be included as a part of paragraph (A) since it was a part of a conditional sale. Mr. Cram stated that the department would take another look at this. In KAR 92-19-55b, page 2, paragraphs (a)(10) and (11) need to be reviewed as to the correct form.

The Chairperson recessed the meeting at 12:00 noon.

Afternoon Session

Chairperson Schmidt reconvened the meeting at 1:30 p.m.

Chairperson Schmidt recognized Robert Stiles, Bureau of Local and Rural Health, to speak on the proposed rules and regulations notice for hearing by Kansas Department of Health and Environment. KAR 28-53-1, definitions; KAR 28-53-2, agreement; and KAR 28-53-4, records and reports.

Mr. Stiles responded to questions of a general nature from the Committee.

Marla Rhoden, Director of Health Occupations Credentialing, was recognized by the Chairperson to speak on the proposed rules and regulations noticed for hearing by the Department of Health and Environment. KAR 28-61-2, qualifications for licensure; KAR 28-61-3, application for a license; and KAR 28-61-4, application for a temporary license.

Ms. Rhoden stated that these rules and regulations were the result of SB 62, passed during the 2010 Legislative Session.

Staff noted that in KAR 28-61-2 that the punctuation should be looked at in (b) and other subsections to make it uniform throughout.

Phil Griffin, Tuberculosis Control Director, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment. KAR 28-1-30, definitions; KAR 28-1-31, TB prevention and control plan; and KAR 28-1-32, health services at colleges and universities; submission of a TB prevention and control plan; monitoring of compliance.

The Committee had no questions for Mr. Griffin.

The Chairperson recognized Christina Morris, Director, Prescription Monitoring Program, to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-21-2, electronic reports.

Staff noted that subsection (a) needs clarification if it is the intent that any one of the three items and not all three would require the report to be completed. Ms. Morris stated that she would look at this.

Randy Forbes, Staff Attorney, was welcomed by the Chairperson to address the proposed rules and regulations notice for hearing by the Kansas Pharmacy Board. KAR 68-2-22, electronic transmission of a prescription; and KAR 68-20-10a, electronic transmission of a controlled substance prescription.

Mr. Forbes responded to questions from Committee members.

Chairperson Schmidt recognized Patrick Martin to speak on the proposed rules and regulations notice for hearing by the Racing and Gaming Commission. KAR 112-101-6, disqualification criteria; KAR 112-102-8, disqualification criteria; KAR 112-103-2, license levels; KAR 112-103-4, application for a license; KAR 112-103-5, applicant identification; KAR 112-103-8, disqualification criteria for a level I, level II, or level III license; KAR 112-103-15, license mobility; limitations; KAR 112-104-1, definitions; internal control system; KAR 112-104-8, retention, storage, and destruction of books, records, and documents; KAR 112-104-13, patron deposits; KAR 112-104-14, cage and main bank; KAR 112-104-15, count room and main bank requirements; KAR 112-104-16, accounting controls for the cage and main bank; KAR 112-104-32, unclaimed winnings; KAR 112-105-1, security department; KAR 112-105-2, security plan; KAR 112-105-3, emergency operations plan; KAR 112-106-1, surveillance system; KAR 112-106-2, surveillance system plan; KAR 112-106-5, surveillance room; KAR 112-106-6, monitoring; KAR 112-107-3, submission for testing and approval; KAR 112-107-5, transportation of LFGs; KAR 112-107-10, master list of approved gaming machines; KAR 112-107-21, progressive LFGs; KAR 112-107-22, wide-area progressive systems; KAR 112-108-18, tournament chips and tournaments; KAR 112-108-36, required personnel for specific table games; KAR 112-108-55, shipment of table games and table game mechanisms; KAR 112-110-3, central computer system security; KAR 112-112-1, office of responsible gambling; KAR 112-112-3, responsible gambling plan; KAR 112-112-4, self-exclusion list; KAR 112-112-7, confidentiality of the self-exclusion list; and KAR 112-112-9, procedure for removal from the self-exclusion list.

Mr. Martin stated that all these proposed rules and regulations are revisions the Commission found were necessary when going through them in the opening of the first operation.

A Committee member had a question concerning KAR 112-101-6, (6)(2) regarding whether the number of days refers to calendar days or business days. Mr. Martin stated that the new rules regarding development of rules and regulations states that it is calendar days unless otherwise stated. In KAR 112-103-15 (c) staff noted the language should be clarified to show that approval is necessary before employment at a "different lottery gaming facility." A Committee member suggested that in KAR 112-104-1, (a)(5) some clarification would be helpful indicating that this is performed by a person. Staff suggested that on page 4, (a)(17) after "K.A.R. 74-5-2," the statement "and amendments thereto" be added. It was suggested that all rules and regulations be reviewed for this correction. In KAR 112-105-3 (a)(5) staff suggested that the Commission may want to look at KSA 21-4201 for a definition of "weapon." Staff noted in KAR 112-107-10, page 2, (b)(2)(H), the term "machine" was used without the term "gaming"

preceding it; all other instances used the term “gaming machine.” Mr. Martin stated that the agency would review this rule and regulation. In KAR 112-108-36, subsection (b) staff noted that there appears to be a gap in supervisor coverage in tables if there are 5 or 7 tables open. Mr. Martin stated that the agency would look at this again.

Chairperson Schmidt welcomed Darla Price, program manager, to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce relating to the Promoting Employment Across Kansas Act (PEAK). KAR 110-21-1, definitions; KAR 110-21-2, eligibility and application requirements; KAR 110-21-3, reconsideration of application; KAR 110-21-4, agreement; and KAR 110-21-5, reporting requirements.

Staff noted that in KAR 110-21-4, page 2, (b)(13), the term “qualified” was omitted before “companies.” In KAR 110-21-5, (c)(3) a Committee member questioned the use of Social Security number, since this could become a public record. Ms. Price stated that they would look at this and see whether other identification numbers (such as position number) could be substituted. Another concern of Committee members was the request for quarterly reports which would require additional paper work on the part of the qualified companies.

It was announced that the next meeting would be March 1, 2011. The Chairperson adjourned the meeting at 3:45 p.m.

Prepared by Judy Glasgow
Edited by Rany Gilliland

Approved by the Committee on:

_____ March 1, 2011 _____
(Date)

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fire and casualty insurance, basic property insurance, inspection, placement, procedures, requirements. After discussion, the Committee had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning audited financial reports, filing requirements. After discussion, the Committee had no comment.

Kansas Insurance Department (Kansas Committee on Surety Bonds). The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of purchase. After discussion, the Committee had no comment.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (approval of baccalaureate degrees) and definitions (student health insurance). After discussion, the Committee had no comment.

Kansas Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning forms and adoptions by reference; dishonest or unethical practices of broker-dealers and agents; and dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. After discussion, the Committee had no comment.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning original package, change of original packages or labels; definitions; value-added packages; recordkeeping requirements; defective liquor containers; trade practices; outdoor advertising specialty items; items furnished by industry members, limits; display enhancers; point-of-sale advertising material; defective liquor containers, repurchase by retailer; sampling product promotions; educational seminars; and revocations. After discussion, the Committee had the following comments.

KAR 14-6-1. The Committee questions what the differences are between flavored malt beverage, cereal malt beverage, and malt beverage. The Committee suggests the agency review the use of these terms in this and other regulations and consider using a defined term to describe the beverage appropriately. The Committee suggests the agency review definitions in KSA 41-2701 and KSA 2010 Supp. 41-2729. In addition, reference is made to federal definitions in KSA 2010 Supp. 41-2729 (b) which were in effect on January 3, 2005. The Committee wonders whether these are the definitions which the agency wishes to use or whether there is a need to update the statute.

The Committee asks the agency to review the history section to determine whether both KSA 41-331 and KSA 41-1127 should be referenced as being implemented.

KAR 14-10-5. The Committee suggests, as in the previous regulation, that the agency consider a definition of malt beverage which would include both “cereal” and “flavored.”

KAR 14-10-21. The Committee suggests a cross reference to the appropriate KAR where any CFR referenced in this regulation is adopted by reference.

KAR 14-10-23. The Committee suggests a cross reference to the appropriate KAR where the CFR referenced in this regulation is adopted by reference.

KAR 14-14-6b. The Committee suggests that the agency update the Economic Impact Statement as noted by the agency spokesperson during the Committee’s hearing on these regulations.

Concern. The Committee is concerned that these regulations impose more stringent requirements than what is required by the federal government.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning credit sales, conditional sales, and other sales and service transactions that allow deferred payment; allowances for bad debts; repossessed goods; gifts, premiums, prizes, coupons, and rebates; goods returned when a sale is rescinded; operating leases; private letter rulings; and membership fees and dues. After discussion, the Committee had the following comments.

KAR 92-19-3a. The Committee believes that the manner in which (a)(1) is articulated is confusing and that this paragraph should be reworded so that it is clear that a “financing lease” is a type of “conditional sale.”

KAR 92-19-55b. The Committee believes that (a)(9) and (a)(10) should be combined to provide additional clarity to the regulation.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; agreement; and records and reports. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning qualifications for licensure; application for a license; and application for a temporary license (speech-language pathologists and audiologists). After discussion, the Committee had the following comment.

Comment. Please review this set of regulations for consistency in the use of the comma preceding “and amendments thereto.”

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; TB prevention and control plan; and health services at colleges and universities, submission of a TB prevention and control plan, monitoring of compliance. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning electronic reports (Prescription Monitoring Program). After discussion, the Committee had the following comment.

KAR 68-21-2. In the last sentence of subsection (a), there appear to be three conditions. The Committee suggests that the agency clarify whether any one or all of the three conditions must be met in order to file a zero report with the Board.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning electronic transmission of a prescription and electronic transmission of a controlled substance prescription. After discussion, the Committee had no comment.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning disqualification criteria (facility manager); disqualification criteria (supplier); license levels; application for a license; applicant identification; disqualification criteria for a level I, level II, or level III license;

license mobility, limitations; definitions, internal control system; retention, storage, and destruction of books, records, and documents; patron deposits; cage and main bank; count room and main bank requirements; accounting controls for the cage and main bank; unclaimed winnings; security department; security plan; emergency operations plan; surveillance system; surveillance system plan; surveillance room; monitoring; submission for testing and approval; transportation of LFGs; master list of approved gaming machines; progressive LFGs; wide-area progressive systems; tournament chips and tournaments; required personnel for specific table games; shipment of table games and table game mechanisms; central computer system security; office of responsible gambling; responsible gambling plan; self-exclusion list; confidentiality of the self-exclusion list; and procedure for removal from the self-exclusion list. After discussion, the Committee had the following comments.

KAR 112-103-15. In subsection (c), the Committee suggests that the end of the first sentence read "...commencing employment at the other lottery gaming facility" in order to clarify the meaning.

KAR 112-104-1. In paragraph (a)(5), the Committee suggests language which would clarify that it is an individual who has no knowledge of the inventory balance. In paragraph (a)(12), the Committee suggests that clarification of the language would be helpful to indicate the criteria for the determination by the Commission if the media storage device is capable of affecting the integrity of gaming. In paragraph (a)(17), the Committee suggests the addition of "and amendments thereto" after the reference to KAR 74-5-2. Please review other regulations in this set for this similar issue.

KAR 112-105-3. In paragraph (a)(5), the Committee suggests a clarification of what is meant by "any other weapons." The Committee suggests that the agency refer to K.S.A. 2010 Supp. 21-4201 for assistance in determining what would constitute a weapon.

KAR 112-107-10. The Committee is concerned about the use of the terms "gaming machine," "gaming equipment," and "machine." The Committee asks the agency to review this set of regulations for the use of these terms and standardize the meaning throughout. This would include defining the terms if there are differences in the meanings of the terms.

KAR 112-108-36. The Committee believes that there is a gap in this regulation when there are five open tables and one of them is a craps table and also in the instance where there are seven or more open gaming tables. Please review this regulation to determine if this is indeed the case and please make appropriate modifications.

General Comment. Several of these regulations specify numbers of days. The Committee suggests the Commission note in its correspondence with the regulated community that "days" means "calendar days" and not "business days" and refer to KSA 2010 Supp. 77-503(c).

Kansas Department of Commerce. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligibility and application requirements; reconsideration of application; agreement; and reporting requirements. After discussion, the Committee had the following comments.

KAR 110-21-2. In paragraphs (b)(16)(A) and (B), the Committee believes the language is too limiting and that other segments of a company should be eligible. Please inform the Committee if the agency believes such a change would require a statutory modification.

KAR 110-21-4. In paragraph (b)(13), the Committee suggests "companies" be changed to "the qualified company" to parallel usage of this term in other parts of this regulation.

KAR 110-21-5. The Committee is concerned with the submission requirement of Social Security numbers and asks the agency to explore other alternatives for tracking purposes. The Committee also wishes to express concern with the quarterly report requirement and asks the agency to consider the burden being placed upon these companies and whether the reporting requirements could be minimized or the frequency reduced.