

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

December 13, 2022  
Room 582-N—Statehouse

#### Members Present

Senator Kellie Warren, Chairperson  
Representative Barbara Wasinger, Vice-chairperson  
Senator Oletha Faust-Goudeau, Ranking Minority Member  
Senator Ethan Corson  
Senator Carolyn McGinn  
Senator Caryn Tyson  
Representative John Carmichael  
Representative Bill Sutton  
Representative Valdenia Winn

#### Members Absent

Representative Annie Kuether  
Representative Paul Waggoner

#### Staff Present

Jill Shelley, Kansas Legislative Research Department (KLRD)  
Jordan Milholland, KLRD  
Jennifer Light, KLRD  
Jessie Pringle, Office of Revisor of Statutes  
Jenna Moyer, Office of Revisor of Statutes  
John Willey, Committee Assistant

#### Conferees

Blake Flanders, Ph.D., President and CEO, State Board of Regents  
Patrick Porubsky, Laboratory Operations Manager, Kansas Bureau of Investigation  
Crystal Puderbaugh, Director of Academic Affairs, State Board of Regents  
Brock Roehler, General Counsel, Office of the State Bank Commissioner

## TUESDAY, DECEMBER 13 MORNING SESSION

### Welcome; Approval of October 18, 2022, Minutes

Chairperson Warren called the meeting to order at 10:08 a.m. Senator Corson, Senator Faust-Goudeau, Senator McGinn, and Representative Carmichael attended the meeting via Webex. Chairperson Warren asked the Committee to review the minutes of the October 18, 2022, meeting.

*Representative Wasinger moved the minutes be approved as written. Representative Winn seconded the motion. The motion carried without objection.*

Jenna Moyer, Assistant Revisor, Office of the Revisor of Statutes, provided the Authority Memorandum. ([Attachment 1](#))

### State Board of Regents

Article 9a, Kansas Promise Scholarship (new): KAR 88-9a-1, definitions; KAR 88-9a-2, application; KAR 88-9a-3, appeal procedure; KAR 88-9a-4, scholarship awards; KAR 88-9a-5, scholarship agreement; KAR 88-9a-6, postponement of or release from promise scholarship agreement requirements; KAR 88-9a-7, repayment. ([Attachment 2](#))

Blake Flanders, Ph.D., President and Chief Executive Officer, State Board of Regents, appeared before the Committee to address new Article 9a rule and regulation regarding the Kansas Promise Scholarship. He reviewed each proposed rule and regulation and responded to questions and comments from the Committee.

Vice-chairperson Wasinger asked how this scholarship divided funds between the state universities and vocational technical colleges. Dr. Flanders advised the state universities are not eligible for this money, which is available only to community and technical colleges and to independent nonprofit colleges such as McPherson College. He further stated the funding distribution is dependent on students applying for the scholarship; there is no time limit for application.

Senator Faust-Goudeau asked how students are made aware of this program and whether they must be currently enrolled. Dr. Flanders stated students can apply at any time. If the student is in high school, and they want to enter a technical education field, a separate program is available. Dr. Flanders advised communication between the college and students about the program is important.

Vice-chairperson Wasinger asked a question concerning which officials have the power to decide whether a student would get the aid or had made the best possible effort to fulfill the requirements of the scholarship agreement. Dr. Flanders stated the Director of Financial Aid at the State Board of Regents would make the decision. Vice-chairperson Wasinger expressed her concern that only one person is making the decision and further concern about recoupment of funds from individuals who fail to meet all the requirements of the Promise Scholarship

agreement. Representative Carmichael further discussed the program and decision-making with Dr. Flanders.

KAR 88-28-1, definitions; KAR 88-28-2, minimum requirements; KAR 88-28-3, certificates of approval; KAR 88-28-4, site or virtual visits; KAR 88-28-8, closure of an institution; KAR 88-28-9, ownership changes; KAR 88-28-10, provisional certificate of approval. ([Attachment 3](#))

Crystal Puderbaugh, Director of Academic Affairs, State Board of Regents, appeared before the Committee to address KAR 88-28-1 through KAR 88-28-10. She reviewed each proposed rule and regulation and responded to questions and comments from the Committee.

Senator Faust-Goudeau asked about the closure of schools. Ms. Puderbaugh explained the process that the State Board of Regents uses when a school is closed. Representative Winn further discussed closures and whether there is a provision for funds to be reimbursed to students if there is a closure. Ms. Puderbaugh stated that is included in the requirements for closure.

Vice-chairperson Wasinger asked about proposed KAR 88-28-2 and whether this was concerning Fort Hays State University's accreditation. Ms. Puderbaugh stated these regulations do not apply to the public institutions.

### **Kansas Bureau of Investigation**

Article 25, Testing Oral Fluid for Law Enforcement Purposes (new): KAR 10-25-1, definitions; KAR 10-25-2, preliminary oral fluid screening test devices ([Attachment 4](#))

Patrick Porubsky, Laboratory Operations Manager and Forensic Chemist, Kansas Bureau of Investigation, appeared before the Committee to address the proposed rules and regulations. He reviewed each proposed rule and regulation and responded to questions and comments from the Committee.

Representative Carmichael expressed concern about metabolite testing specifically for tetrahydrocannabinol (THC) as evidence of impairment. Mr. Porubsky explained the substances the device screens for in oral fluid samples.

Representative Sutton asked if this is new technology. Mr. Porubsky said it is new to Kansas, but has been used for several years in other countries and states. Representative Sutton continued by asking whether this test can tell if someone is impaired. Mr. Porubsky said the device could determine only whether the drug is present; it does not imply impairment. He continued to describe how drugs metabolize in the body.

Senator Faust-Goudeau asked if the device would be used if the police suspected drug-impaired driving. Mr. Porubsky stated the statute for the use of this device would fall under the same statute for the use of the preliminary breath test roadside. It is a voluntary test roadside; the officer would need to obtain a warrant to obtain a blood test if it is believed the individual is impaired.

Senator Tyson expressed concerns about false positive results and the potential of DNA collection. Mr. Porubsky stated the field test cartridges would not be sent to the laboratory, and different statutes cover DNA collection and testing.

Representative Carmichael asked about cut-off values on the tests and whether the cut-off values are set in these rules and regulations. Mr. Porubsky stated the manufacturer sets the values for the instrument. The agency conducted a laboratory comparison of the device's cut-offs and compared those results to national averages. Representative Carmichael expressed interest in seeing the scientific studies used by the agency in its evaluation of this device and asked that the request be considered for the Committee's report.

Chairperson Warren asked about the definition of oral fluid and how this device was selected. Mr. Porubsky confirmed that proposed KAR 10-25-2 specifies a device that was requested for use by the Kansas Highway Patrol, and this was the first device that had been evaluated by the agency. He stated other such devices are available and the agency expects additional requests for approval of additional devices. In response to a question from Chairperson Warren, Ms. Moyer provided information on law regarding failure to comply to a law enforcement request for a preliminary test.

### **Office of the State Bank Commissioner**

KAR 17-11-24, sale of tangible personal property to bank or trust company executive officers, employees, directors, and related interests.  
([Attachment 5](#))

Brock Roehler, General Counsel, Office of the State Bank Commissioner, appeared before the Committee to review the proposed rule and regulation and respond to questions and comments from the Committee.

Representative Carmichael expressed concern about how repossessed property for which there is not an established price is disposed of in a reasonable manner rather than in a retail sale or auction. Mr. Roehler explained the three types of property that the Commissioner has approved for this process. The State Banking Code prohibits banks from unilaterally disposing of property; however, there must be a mechanism for them to dispose of certain property without an established market value in a reasonable way. Representative Carmichael was concerned about a bank officer purchasing the property without a public offering or a determination of the actual value of a property.

Chairperson Warren noted this rule and regulation only covers tangible personal property. Mr. Roehler stated banks are expected to follow generally accepted accounting principles.

### **Committee Discussion and Comments on Proposed Rules and Regulations**

The Chairperson opened the discussion of the proposed rules and regulations and, after discussion, the Committee agreed to comments for which staff would provide final wording.

## **State Board of Regents**

Article 9a, Kansas Promise Scholarship (new): KAR 88-9a-1, definitions; KAR 88-9a-2, application; KAR 88-9a-3, appeal procedure; KAR 88-9a-4, scholarship awards; KAR 88-9a-5, scholarship agreement; KAR 88-9a-6, postponement of or release from promise scholarship agreement requirements; KAR 88-9a-7, repayment.

**KAR 88-9a-6.** The Committee expressed its concern that only one person, the Director of Student Financial Aid for the State Board of Regents', will determine whether a Promise Scholarship recipient has made a "best possible effort" to fulfill the requirements of the scholarship agreement.

KAR 88-28-1, definitions; KAR 88-28-2, minimum requirements; KAR 88-28-3, certificates of approval; KAR 88-28-4, site or virtual visits; KAR 88-28-8, closure of an institution; KAR 88-28-9, ownership changes; KAR 88-28-10, provisional certificate of approval.

The Committee had no comments.

## **Kansas Bureau of Investigation**

Article 25, Testing Oral Fluid for Law Enforcement Purposes (new): KAR 10-25-1, definitions; KAR 10-25-2, preliminary oral fluid screening test devices.

The Committee expressed its concern that the approved device's cut-off values for indicating a drug or its metabolite has been detected in an oral fluid sample are determined only by the manufacturer of the device and are not established in the rule and regulation. The Committee notes no scientific evidence was presented regarding whether a positive result using this device indicates impairment or indicates only the presence of detectable substances. It asks the agency to provide to the Committee any studies and literature the agency relied upon in determining the device appropriately indicates a positive result.

## **Office of the State Bank Commissioner**

KAR 17-11-24, sale of tangible personal property to bank or trust company executive officers, employees, directors, and related interests.

The Committee expressed concern that sales of tangible personal property to bank or trust company officers, employees, directors, or related interests without approval from the Commissioner, without an established market price, and without a public offering to determine whether the amount realized is in fact the actual value of the property, could facilitate self-dealing and disadvantage consumers.

## Discussion of 2022 HB 2087 Data Collection Spreadsheet

Ms. Moyer reviewed a bill brief on 2022 HB 2087 and provided a copy of the bill text. ([Attachment 6](#) and [Attachment 7](#)). Ms. Moyer discussed the provisions of the bill and noted requirements of agencies to review and report on rules and regulations. Committee questions and comments ensued.

Jill Shelley, Principal Research Analyst, Kansas Legislative Research Department, discussed a draft data collection sheet for agencies to use in meeting the requirements of 2022 HB 2087 ([Attachment 8](#)). Ms. Shelley noted the fields included on the draft sheet and asked for Committee comments on the document. Discussion ensued on statutory date changes and authorizing statutes.

*Senator Tyson moved to add a field on the document to include the date of authorizing legislation or the date the authorizing statute was last amended. Vice-chairperson Wasinger seconded the motion. The motion carried.*

*Chairperson Warren moved to adopt the proposed data collection questions as amended. Vice-chairperson Wasinger seconded the motion. The motion carried.*

## Adjourn

Chairperson Warren thanked the members and staff for their hard work for the Committee this year and adjourned the meeting at 12:13 p.m.

Prepared by John Wiley

Edited by Jordan Milholland, Jennifer Light, and  
Jill Shelley

Approved by the Committee on:

February 10, 2023

(Date)