

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 9, 2006
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice Chairperson
Senator Donald Betts
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative Jan Pauls
Representative Sharon Schwartz
Representative Arlen Siegfried
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Senator Chris Steineger
Representative Lance Kinzer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Sandy McAdam, Kansas Department of Health and Environment
Tom Conley, Kansas Department of Health and Environment
David Whitfill, Kansas Department of Health and Environment
Lindsey Douglas, Hein Law Firm
Julie Hein, Hein Law Firm
Phyllis Gilmore, Behavioral Sciences Regulatory Board
Rick Bean, Kansas Department of Health and Environment
Christine Jump, Kansas Department of Health and Environment
Gary Blackburn, Kansas Department of Health and Environment

Faith Loretto, Department of Administration
Mike Kelly, Department of Administration
John Bottenberg, Westar
Kathleen Smith, Kansas Department of Revenue
Tom Hatten, Kansas Department of Revenue
Laurie Pickle, Kansas Corporation Commission
Mike Hoeme, Kansas Corporation Commission
Teri Graham, Federal Motor Carrier Safety Administration
Carmen Alldritt, Kansas Department of Revenue
Diane Albert, Kansas Department of Revenue
Deletria Nash, Kansas Insurance Department
Ken Abitz, Kansas Insurance Department
Steve O'Neil, Kansas Insurance Department
Julie Holmes, Kansas Insurance Department
Marty Hazen, Kansas Insurance Department
Dick Cook, Kansas Insurance Department
Roger Swartz, Kansas Insurance Department
Randall Beaver, USDOT, FMCSA

Chairperson Holmes called the meeting to order at 8:30 a.m. and asked for action on the Committee minutes for November 7, 2005. *Representative Pauls moved that the minutes be approved. Senator Betts seconded the motion. The motion carried.*

Ken Wilke addressed the Committee and handed out copies of the bill that the Committee had requested which would make a technical amendment to KSA 77-424 changing the date for the meeting of State Rules and Regulations Board until after January 1 (Attachment 1). *Senator V. Schmidt moved to introduce the bill in the Senate as presented. Representative Schwartz seconded the motion. The motion carried.*

Chairperson Holmes recognized Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board, to address the proposed rule and regulation noticed for hearing. KAR 102-5-5, examination for marriage and family therapist or clinical marriage and family therapist.

Ms. Gilmore gave a brief review of the rule and regulation and noted that this will allow those interested in taking the national examination for licensure as a marriage and family therapist to apply during their last semester before graduation. There were no questions from the Committee. The Chairperson thanked Ms. Gilmore for her presentation before the Committee.

Tom Conley, Chief of Radiation Control Section, was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment. KAR 28-35-178b, General license, certain detecting, measuring, gauging, or controlling devices, and certain devices for producing light or an ionized atmosphere.

Staff noted that on page 5, paragraph 7, the term "export" is used and questioned whether this referred to export from the state or country since the term is not in the definition section. Mr. Conley stated that in this context, the term refers to export outside the country. He noted that a statement could be added to that effect. Mr. Conley stated that he would take this recommendation back to the Department. Chairperson Holmes thanked Mr. Conley for his appearance before the Committee.

Chairperson Holmes introduced Rick Bean to speak to the proposed rules and regulations noticed for hearing by Kansas Department of Health and Environment (Attachment 2). KAR 28-73-1,

definitions; KAR 28-73-2, application; KAR 28-73-3, environmental use control agreements; KAR 28-73-4, long-term care agreements for category 3 property; KAR 28-73-5, financial assurance; KAR 28-73-6, duration of environmental use controls; and KAR 28-73-7, restrictions, prohibitions, and zoning requirements.

These regulations are a result of HB 2247, passed by the 2003 Legislature. These rules and regulations establish procedure for landowners to voluntarily establish restrictions on their contaminated property to mitigate current and future risks of exposure to the contamination. KDHE anticipates an increase in applications for Environmental Use Controls in future years.

Questions of a general nature were raised by the Committee and staff concerning the costs of the program and how it would be regulated. Mr. Bean noted that there would be an agreement signed between the two parties and that a payment schedule has been established for three different categories. He explained to the Committee how each would be administered. There being no further questions, the Chairperson thanked Mr. Bean for appearing before the Committee.

Chairperson Holmes recognized Harry Bossi, Health Benefits Manager, to address the proposed rule and regulation noticed for hearing by the State Employees Health Care Commission (Attachment 3). KAR 108-1-4, local unit of government employee health care benefits plan.

Mr. Bossi explained that the proposed regulations would extend eligibility to city hospitals, county hospitals, and hospital districts by adding those entities to the definition of "local unit." In response to a question, Mr. Bossi stated that an impact study had been done to determine the number of additional persons that would be covered and how it would impact the costs. Mr. Bossi stated that an analysis had been performed and that there would be no economic impact from these additions. After responding to all questions, the Chairperson thanked Mr. Bossi for his presentation before the Committee.

Laurie Pickle, Kansas Corporation Commission, was introduced by Chairperson Holmes to address the proposed rule and regulation noticed for hearing. KAR 82-4-3a, Hours of service.

Ms. Pickle stated that these changes were the result of new federal regulations affecting the hours of service for motor carrier drivers equipped with a sleeper berth. The Federal Motor Carrier Safety Administration (FMCSA) strongly urged all states to adopt the same hours of service regulations so that local law enforcement officials could consistently apply the regulations to these motor carriers. Staff noted that no date was provided for the public hearing. Ms. Pickle and Mr. Hoeme answered Committee questions concerning CDL and non-CDL drivers and what constitutes a farm vehicle. The Committee had no further questions, and Ms. Pickle and Mr. Hoeme were thanked by the Chairperson for their appearance before the Committee.

Chairperson Holmes recognized Carmen Alldritt, Director of Motor Vehicles, to speak to the proposed rules and regulations noticed for hearing by Kansas Department of Revenue. KAR 92-51-41, permanent registration of city, county, community college, and technical college vehicles, and KAR 92-51-41a, vehicles used as unmarked law enforcement vehicles, registration.

Ms. Alldritt explained that KAR 92-51-41 was amended to add truck tractor, trailer, or semitrailer community college and technical college vehicles as types of vehicles eligible for permanent registration, if leased by the community college or technical college and used exclusively for a truck driver training program. KAR 92-51-41a provides for registration of unmarked law enforcement vehicles utilized by government entities, including the State of Kansas, any city, county, agency, or instrumentality of the State of Kansas, or any federal agency. After responding to general questions from Committee members, Ms. Alldritt was thanked for her presentation before the Committee.

Mr. Richard Cram was introduced to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue. KAR 92-12-4 and KAR 92-12-5, revoked; KAR 92-12-4a, resident individual.

Mr. Cram explained that KAR 92-12-4a was proposed to clarify the status of "Kansas resident" for the purpose of taxation under the Kansas income tax law. Mr. Cram stated that there are 31 different factors in determining whether or not a person's domicile is in this state for the tax year in question. He noted that this was not to catch persons who were avoiding paying taxes in Kansas, but to have a set of factors in writing for both parties to use when determining Kansas residency. Staff noted that the history section needed to be updated and the agency needed to update the reference to the Soldiers and Sailors Civil Relief Act of 1940, as it has been updated by Congress by the Soldiers and Service Members Civil Relief Act of 2003. Mr. Cram responded to several questions of a general nature from the Committee and staff. Chairperson Holmes thanked Mr. Cram for his appearance before the Committee.

Kathleen Smith was introduced to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue. KAR 92-12-120, definition of qualified taxpayer; KAR 92-12-121, incurred qualified expenditures; and KAR 92-12-130, amount of tax credit.

Ms. Smith provided a general overview of the three proposed rules and regulations noticed for hearing for the Committee. KAR 92-12-120 prohibits any community service organization awarded tax credits from taking those donations coming through the community service program and making repairs or expenditures to their historic structure and then receiving a tax credit based on the expenditures made with the donations received. KAR 92-12-130 clarifies the amount of credit allowed for those small employers participating in a small employer health benefit plan. There were no questions and Chairperson Holmes thanked Ms. Smith for appearing before the Committee.

Tom Hatten, Policy and Research, was introduced to address the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue. KAR 92-19-22a, admissions; and KAR 92-19-83, prescriptions for dietary supplements.

Mr. Hatten stated that KAR 92-19-22a was amended to delete the reference to KAR 29-19-34a, and to reword the definitions to conform with the Department of Administration requirements. KAR 92-19-83 is amended to keep the Department in line with the streamlined sales tax by including the definition for dietary supplements.

Committee members suggested that KAR 92-19-22a (1) (A) be changed from "A" vitamin to "Any" vitamin. A Committee member expressed some concern about charging tax on items that are filled by prescription in these categories, since prescriptions are not presently taxed. Mr. Hatten responded to general questions concerning these regulations. Chairperson Holmes thanked Mr. Hatten for appearing before the Committee.

Chairperson Holmes introduced Greg Foley, Executive Director, to explain the proposed rules and regulations noticed for hearing by the Kansas State Conservation Commission (Attachment 4). KAR 11-3-1, definitions; KAR 11-3-2, application for construction or modification; KAR 11-3-3, permit to construct, modify, or rehabilitate; KAR 11-3-4, allocation of funds; KAR 11-3-5, contract; KAR 11-3-6, partial payments; KAR 11-3-7, notification of completion; KAR 11-3-8, alterations to project plan; KAR 11-3-9, supplemental application procedures; KAR 11-3-10, inspection; KAR 11-3-11, application for rehabilitation; and KAR 11-3-12, application for financial assistance for inundation area mapping.

Mr. Foley gave the Committee an overview of the proposed regulations. He stated that in KAR 11-3-11, paragraph (b), the date should be changed from April 1 to July 1 for a specific rehabilitation project to be considered for funding in the next fiscal year.

Staff noted that in KAR 11-3-4, a technical change in the ordering of paragraphs is needed. It was also suggested that in KAR 11-3-6 and KAR 11-3-7, the terms "construction, rehabilitation, or modification" be used in the same order throughout the regulations for consistency. Mr. Foley responded to general questions from Committee members. Chairperson Holmes thanked Mr. Foley for his appearance before the Committee.

Chairperson Holmes introduced Larry Buening, Jr., Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-25-1, definitions; KAR 100-25-2, general requirements; KAR 100-25-3, requirements for office-based surgery and special procedures; KAR 100-25-4, office-based surgery and special procedures using general anesthesia or a spinal or epidural block; and KAR 100-25-5, standard of care.

Mr. Buening explained that these rules and regulations had previously come before the Committee on November 7, 2005. He stated that these new rules and regulations have incorporated the changes that the Committee had recommended previously, along with comments received at the public hearing. In response to Committee questions, Mr. Buening stated that complaints filed with the Board are not subject to the Open Records Act, but if the Board files a petition alleging violations to the Healing Arts Act, then those do become a matter of public record. Committee members had questions regarding KAR 100-25-3, concerning the discharge procedure from these office-based surgery locations and the occurrence of complications.

Mr. Buening continued his explanation of proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts, KAR 100-26-1, services rendered to individuals located in this state; KAR 100-26-2, definitions; and KAR 100-26-3, orders for diagnostic professional services and therapeutic professional services.

The Committee had no questions concerning these proposed rules and regulations and Chairperson Holmes thanked Mr. Buening for his presentation before the Committee.

Deletria Nash, Staff Attorney, was introduced by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department. KAR 40-1-48, risk-based capital instructions for health organizations; KAR 40-2-20, life insurance, accelerated benefits, requirements and restrictions; KAR 40-3-5, fire and casualty insurance, rating organizations, filing of forms; KAR 40-3-12, fire and casualty insurance companies, rating plans, requirements; KAR 40-3-22, marine, inland marine, and transportation insurance; KAR 40-3-40, fire and casualty insurance; unfair rate discrimination, certain acts and practices included; KAR 40-3-43, title insurance, controlled business, definitions, requirements; KAR 40-3-44, automobile insurance, underwriting information, restrictions; KAR 40-3-47, fire and casualty insurance, rating organizations, kinds of insurance affected; KAR 40-3-48, insurance companies; managing general agents; definitions; requirements; KAR 40-4-25, accident and sickness insurance standards for benefits; and KAR 40-4-41, utilization review organizations; application; definitions; and KAR 40-7-24, agencies, agents, employees.

Ms. Nash stated that KAR 40-1-48 sets out the requirements and format of the risk-based capital report that all domestic health organizations are required to file each year. KAR 40-3-48 removed the requirement for managing general agents to maintain errors and omissions to comply with the statute change in 2004. The proposed regulation KAR 40-2-20 removes the definition of "qualifying event" and updates the history of the regulation. The other changes in this regulation are technical only.

Staff noted that in KAR 40-4-41, the definition of “institutional provider” and “professional provider” should be included in the definition of “health care provider,” since they are not defined in the statute. Staff also suggested that the definitions of “organization” and “utilization review organization” be clarified. Committee members had questions concerning the number of days in the review process, including external and internal reviews, and suggested that the agency review these figures. A Committee member noted that there were two paragraphs numbered 21, one on page 5 and one on page 6. In KAR 40-7-24, staff noted that this may be outside the scope of the statute. After answering all questions from staff and Committee members, Ms. Nash was thanked for her appearance before the Committee by Chairperson Holmes.

Raney Gilliland provided the Committee members with information provided by the Kansas Department of Health and Environment concerning the Cimarron National Grasslands, Konza Prairie National Area, and The Nature Conservancy’s Cheyenne Bottoms Preserve (Attachment 5). This is in response to a request from the Committee last summer.

Senator Brownlee requested that the minutes for November 7, 2005, be reconsidered and amended to include comments under the Committee Comments portion to the Kansas Department of Commerce, noting that the statutory authority for the Star Bond statute expires in 2007. *Representative Pauls moved to withdraw her motion to approve the minutes and Representative Svaty seconded the motion. The motion carried. Senator Brownlee moved to amend the minutes as requested and Senator V. Schmidt seconded the motion. The motion carried.*

Ken Wilke, Revisor of Statutes Office, notified the Committee that he had drafted the bill for the Kansas Board of Technical Professions giving them the necessary authority to allow renewals to be split in half, but that he had been notified by the Board that they were withdrawing the regulation, so the bill would not be needed.

The Committee adjourned at 11:45 a.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general license, certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere; definitions; application; environmental use control agreements; long-term care agreements for category 3 property; financial assurance; duration of environmental use controls; restrictions, prohibitions, and zoning requirements, and had the following comments.

KAR 28-35-178b. In subsection (b)(7), the Committee is concerned with the term “export” because the final destination is unclear; *e.g.*, out of the state or out of the country. Please consider clarification of this term as long as it does not conflict with the requirements of the federal Nuclear Regulatory Commission. In addition, the Committee believes that if 10 CFR part 110 is to be included, it should be adopted by reference.

Kansas State Employees Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local unit of government employee health care benefits plan and had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning risk-based capital instructions for health organizations; insurance companies, managing general agents, definitions, requirements; life insurance, accelerated benefits, requirements, and restrictions; fire and casualty insurance, rating organizations, filing of forms; fire and casualty insurance companies, rating plans, requirements; fire and casualty insurance, rating organizations, kinds of insurance affected; marine, inland marine, and transportation insurance; fire and casualty insurance, unfair rate discrimination, certain acts and practices included; automobile insurance, underwriting information, restrictions; title insurance, controlled business, definitions, requirements; agencies, agents, employees; accident and sickness insurance standards for benefits; and utilization review organizations, application, and definitions, and had the following comments.

KAR 40-3-12. The use of the word “which” in the definitions does not appear to be necessary and makes the definitions incomplete sentences. In addition, the use of the word “which” is inconsistent within the definitions.

KAR 40-4-41. The terms “institutional provider” and “professional provider” are not terms used in the statute. Their meaning is unknown. Consider defining these terms through statutory enactment or replacing the terms in the regulation with the known term “health care provider.” A similar review is requested for the term “organization,” which is defined in the regulation. This appears to conflict with the statutory definition of “utilization review organization.” In subparagraph (20) on page 5, the word “review” should be retained. The subparagraphs in subsection (c) are numbered incorrectly; please make the appropriate modifications.

KAR 40-7-24. The inclusion of the term “auto rental products” appears to be outside of the scope of the authority of the statutes; please amend accordingly.

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hours of service and had no comment.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning resident individual; definition of qualified taxpayer; incurred qualified expenditures; amount of tax credit; admissions; prescriptions for dietary supplements; permanent registration of city, county, community college, and technical college vehicles; vehicles used as unmarked law enforcement vehicles, registration; and revocations, and had the following comments.

KAR 92-12-4a. The Committee believes that where reference is already made to the Soldier's and Sailor's Civil Relief Act of 1940, reference also should be made to the Service Member's Civil Relief Act of 2003. In addition, the Committee believes that reference should be made to KSA 75-5155 as an authorizing statute for this regulation in the history section. Finally, the Committee believes that in addition to the list provided in the regulation, it would be useful to the public for the agency to have an additional list of associated factors or documents which would aid in the determination of residency.

KAR 92-19-83. In subsection (b), please adopt 21 CFR 101.36 by reference. In addition, please clarify (b)(1)(A) by changing the word "a" before vitamin to "any" and revise the articles that follow in the list.

State Conservation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application for construction or modification; permit to construct, modify, or rehabilitate; allocation of funds; contract; partial payments; notification of completion; alterations to project plan; supplemental application procedures; inspection; application for rehabilitation; and application for financial assistance for inundation area mapping, and had the following comments.

KAR 11-3-4. Please correct the lettering of the subsections.

KAR 11-3-11. As indicated to the Committee, please change the date of April 1 in subsection (b) to July 1.

General Comment. In several of the regulations the term "construction, modification, or rehabilitation" is not used consistently. Please modify the regulations so that the term is used consistently.

Informational Communication. It is the intent of the Committee to communicate with the chairpersons of the appropriate standing committees and the budget committees regarding the potential for statutory amendment clarifying whether privately owned dams are to be included in the agency's program of dam rehabilitation.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; general requirements; requirements for office-based surgery and special procedures; office-based surgery and special procedures using general anesthesia or a spinal or epidural block; standard of care; services rendered to individuals located in this state; definitions; and orders for diagnostic professional services and therapeutic professional services, and had the following comment.

KAR 100-25-3. Consider review of the reporting of complications due to office-based procedures that occur within the first 72 hours of the procedure. Consider amending the regulation to address these situations.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examination for marriage and family therapist or clinical marriage and family therapist and had no comment.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

March 29, 2006
(date)