

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

June 29, 2010
Room 152-S—Statehouse

Members Present

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

Member Absent

Senator Ralph Ostmeyer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes

Conferees

Bill Brown, Kansas Animal Health Department
Scott Gates, Office of the State Treasurer
Jim Garner, Department of Labor
Ted Smith, Department of Revenue
Dave Starkey, Department of Agriculture
Carman Allen, Board of Emergency Medical Services
Joan Wagnon, Department of Revenue
Debra Billingsley, Board of Pharmacy

John Wine, Insurance Department
Mike Hoeme, State Corporation Commission

Others Present

See attached list.

Note: The Joint Committee, following each rules and regulations meeting, provides both its comments and requests for additional information, in writing, to the agency submitting the proposed rules and regulations. This communication occurs prior to the agency's public hearing. A listing of those comments and requests is provided in the concluding section of these minutes.

Morning Session

Chairperson Schmidt called the meeting to order at 10:05 a.m. The Chairperson asked for action on the Committee's minutes from May 4-5, 2010. *Representative Holmes moved the minutes be approved as written. Representative Palmer seconded the motion. The motion passed.*

The Chairperson recognized Bill Brown, Livestock Commissioner, to speak to the proposed rules and regulations noticed for hearing by the Animal Health Department: KAR 9-7-4, cattle; and KAR 9-27-1, designation of infectious or contagious diseases.

Commissioner Brown addressed the content of the regulations and then answered technical questions from the Committee and staff.

The Chairperson recognized Scott Gates, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Office of the Kansas State Treasurer: KAR 3-3-2, Kansas housing loans.

In addition to other changes, Mr. Gates stated the proposed regulation eliminates a percentage-based requirement directing how the proceeds from the agency's loan program are allocated. Instead, the new regulation sets a dollar amount instead of the percentage. He also provided the Committee with additional information on the 2-, 3-, and 4-unit home values to be included in the final regulation.

The Chairperson recognized Secretary Jim Garner to speak to the proposed rules and regulations noticed for hearing by the Department of Labor: KAR 50-2-21a, computation of employer contribution rates for calendar years 2010 and 2011.

Secretary Garner addressed the content of the regulations (Attachment 1) and noted these were approved by the State Rules and Regulations Board on a temporary basis in May 2010.

The Chairperson recognized Ted Smith, Attorney, Division of Vehicles, to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue: KAR 92-51-25a, proof of valid license required for foreign vehicle dealers.

Mr. Smith indicated the proposed regulation was necessary to clarify law prohibiting foreign

vehicle dealers from purchasing an automobile in Kansas and then selling it in the state. Under the law, the dealer would be required to sell the automobile outside of the United States.

The Chairperson recognized Dave Starkey, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture: KAR 99-25-1, adoption by reference, exceptions, availability of copies; KAR 99-25-9, adoption by reference; and KAR 99-25-12, adoption by reference.

After explaining the proposed regulations, Mr. Starkey introduced Tim Tyson, Director, Division of Weights and Measures, to assist in answering questions from the Committee.

The Chairperson recognized Carman Allen, Technician Manager, to speak to the proposed rules and regulations noticed for hearing by the Board of Emergency Medical Services: KAR 109-15-2, recognition of non-Kansas credentials.

Ms. Allen was asked if the content of the proposed regulation is dependent on 2010 SB 262. Ms. Allen stated this was not the case.

During a break in the presentations, the Committee discussed its meeting schedule for the remainder of the 2010 Interim Session. Members tentatively agreed on dates for five additional meetings (August 16-17, September 20-21, November 8-9, December 15-16, and January 7, 2011). Staff noted that while two days are reserved for a meeting, generally the committee needs only one of the days to meet.

The Chairperson recognized Sheri Smiley to speak to the proposed rules and regulations noticed for hearing by the Secretary of State: KAR 7-16-1, information and services fee.

Ms. Smiley was asked about the \$112,000 generated by the increase in fees, specifically, whether agency use of the increased revenue (two new audit employees and expenses) was approved in the budget passed by the Legislature. Staff from the Secretary of State's Office and Leah Robinson, Kansas Legislative Research Department (KLRD), indicated no limit is placed on the fee funds, so the agency is allowed to use the revenue as requested.

Following the presentation, the Committee discussed a letter from the Kansas Judicial Council to the Department of Administration on the issue of exempt rules and regulations ([Attachment 2](#)). The Judicial Council's Administrative Procedure Advisory Committee is attempting to recommend which exempt regulations should be subject to a more limited rulemaking process. Representative Pauls, a member of the Advisory Committee, noted a letter has been sent to state agencies asking about the promulgation of exempt regulations. The Advisory Committee expects to hear back from agencies in July 2010.

The Chairperson recognized Jill Shelley, KLRD, to present the Committee's annual report (a copy of the report is available in the KLRD office). Ms. Shelley provided an overview of the Committee's activities from the previous year and cited figures of interest to the Committee. Included in the overview was both a listing of 2010 legislation authorizing state agencies to promulgate rules and regulations on specific topics and a listing of agencies which have not yet presented proposed regulations authorized in 2009. The Committee then discussed potential communication with agencies to ensure the regulations are promulgated.

Afternoon Session

The Chairperson recognized Secretary Joan Wagon, Department of Revenue, to update the Committee on the proposed rules and regulations relating to farm wineries originally presented at the May 5, 2010, meeting. (Following the May meeting, the Department of Revenue was asked to consult with industry and report back to the Committee any changes to the regulations.) Secretary Wagon provided a report detailing changes to the proposed regulations (Attachment 3). While some regulations remained unchanged, others were revoked, amended, or withdrawn.

Secretary Wagon summarized the meeting with industry and urged the Legislature to amend KSA 41-308a to clarify the percentage of domestically produced product needed in manufactured wine for it to be considered a "Kansas wine."

The Chairperson then opened the meeting to interested parties wishing to comment on the Department of Revenue's proposed regulations. Britt Nichols, Vin Vivante Winery, spoke in opposition to the proposed regulations. The Committee requested Mr. Nichols submit his comments in writing. Rebecca Rice spoke in opposition to the proposed regulations. Also commenting on the regulations and the meeting between the Department of Revenue and industry were Philip Bradley, Kansas Viticulture and Farm Winery Association, and Whitney Damron, Kansas Grape Growers and Winemakers Association.

The Chairperson recognized Debra Billingsley, Executive Secretary, to speak to the proposed rules and regulations noticed for hearing by the Board of Pharmacy: KAR 68-10-4, definitions; KAR 68-10-5, general requirements; and KAR 68-10-6, minimum equipment. Ms. Billingsley addressed the content of the regulations, spoke about future regulations being promulgated by the agency, and answered general questions on nuclear pharmacies.

Ms. Billingsley then spoke to a second set of proposed regulations noticed for hearing by the Board of Pharmacy: KAR 68-22-1, definitions; KAR 68-22-2, application for approval to utilize electronic supervision; KAR 68-22-3, prior approval and training required; KAR 68-22-4, electronic supervision; and KAR 68-22-5, minimum operating requirements.

The Chairperson recognized John Wine, Attorney, to speak to the proposed rules and regulations noticed for hearing by the Insurance Department: KAR 40-3-43, title insurance, controlled business, definitions, requirements. Mr. Wine explained the proposed regulation and provided written testimony (Attachment 4).

The Chairperson recognized Mike Hoeme, Transportation Director, to speak to the proposed rules and regulations noticed for hearing by the State Corporation Commission: KAR 82-4-30a, applications for interstate registration. He noted this change in the unified carrier registration fee had been adopted as a temporary rule and regulation.

The meeting was adjourned at 3:05 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Animal Health Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning cattle; and designation of infectious or contagious diseases. After discussion, the Committee had the following comments.

KAR 9-7-4. In paragraph (b)(2), the Committee suggests that the publication be adopted by reference. If it has been adopted elsewhere, a cross-reference should be made to the adoption citation in the agency's rules and regulations.

KAR 9-27-1. The Committee suggests that the agency keep the current language of subsection (x) and add a new subsection (y) to add back in the stricken language from the old subsection (x) which allows other diseases to be included at the discretion of the Livestock Commissioner.

Kansas State Treasurer's Office. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Kansas housing loans. After discussion, the Committee had the following comment.

Comment and Request. The Committee wishes to thank the Office for providing the additional information on 2-,3-, and 4-unit home values to be included in the final regulation. It requests the Office provide to the Committee the final language for that subsection.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning computation of employer contribution rates for calendar years 2010 and 2011. 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 proof of valid license required for foreign vehicle dealers. After discussion, the Committee had no comment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adoption by reference, exceptions, availability of copies; adoption by reference; and adoption by reference. After discussion, the Committee had no comment.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning recognition of non-Kansas credentials. After discussion, the Committee had no comment.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning information and services fee. After discussion, the Committee had no comment.

Kansas State Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; general requirements; and minimum equipment. After discussion, the Committee had the following comments.

KAR 68-10-4. In subsection (b), the Committee suggests that the language be

clarified so it is clear that some entity other than the Kansas State Board of Pharmacy determines whether a person has a radioactive material user's license and that this requirement is in addition to holding a current license issued by the Kansas State Board of Pharmacy. In addition, the Committee suggests in paragraph (b)(3) that the practice standards be adopted by reference or, if they are adopted by reference elsewhere, to make an appropriate cross-reference.

KAR 68-10-5. In subsection (e), it would appear that both the Board of Pharmacy and the Nuclear Regulatory Commission have authority with respect to records, acquisition, inventory, and disposition. Is this the case or is clarifying language, such as striking "board and," necessary to distinguish the authority of each? In subsection (g), the language appears to conflict with the statutory definition of "licensed practitioner" contained in the pharmacy act of the State of Kansas. Some rewording of this paragraph would add clarity. In subsection (n), it appears there is a requirement that each nuclear pharmacy have a reference library. Is this what is intended or does the agency mean access to the proper material? In subsection (o), should the USP/NF guidelines be adopted by reference? If they are adopted elsewhere by reference, please provide a cross-reference.

KAR 68-10-6. In subsection (n), please clarify the language as to who or what entity would verify that the transport containers meet the requirements of applicable U.S. Department of Transportation regulations or clearly state that the Kansas State Board of Pharmacy intends to verify compliance with USDOT regulations through documentation or other means.

Kansas State Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application for approval to utilize electronic supervision; prior approval and training required; electronic supervision; and minimum operating requirements. After discussion, the Committee had the following comments.

KAR 68-22-1. In subsection (b), the Committee believes that the inclusion of "pharmacy interns" is inconsistent with statutory provisions. Please explain. In subsection (e), the Committee asks whether the definition of "electronic supervision" conflicts with the definition of "direct supervision." Please explain. The Committee also suggests that all references to statutory subsections be removed. If the statute is amended, then the subsection lettering is likely to change and the agency would then have to amend its rules and regulations to reflect the statutory amendments.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning title insurance, controlled business, definitions, requirements. After discussion, the Committee had no comment.

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications for interstate registration. After discussion, the Committee had the following comments.

KAR 82-4-30a. The Committee believes the word "is" is missing between the words "and" and "hereby" in subsection (b). In addition, the Committee believes the Economic Impact Statement should be clarified as to the actual change in fees estimated to raise \$4.34 million and change in the total amount expected to be generated.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations

reviewed for public comment rules and regulations concerning containers of cereal malt beverage, statement of alcohol content required; definitions; registration of employees, salesperson permits; licensed warehouses; opened containers of domestic table wine or domestic fortified wine on the licensed premises; retail sales and deliveries; farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers; domestic table wine and domestic fortified wine rationing; prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine; public display of domestic table wine or domestic fortified wine; farm wineries and farm winery outlets selling at retail, marking prices, price or inventory control tags, shelf markings; special order shipping, license requirements; special order shipping; bona fide farmers' market sales permit; licensee of farm winery also licensed as manufacturer; label approval required; domestic table wine and domestic fortified wine, Kansas product requirement; sales to minors prohibited; record retention, reporting requirements; imposition of penalties for violations; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from drinking establishment premises; extension of premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; applications, documents required; events, filings, notice, prohibitions; purchase of alcoholic liquor, requirements and restrictions; removal of liquor from event premises prohibited, boundary requirement; and revocations. After discussion, the Committee had the following comment.

General Comment. The Committee is pleased that the Secretary convened the stakeholders concerning the above-referenced proposed rules and regulations. In addition, the Committee is pleased that there appears to be some level of compromise reached as a result of the meeting. After the public hearing, the Committee requests that, in response to this letter, the Secretary outline those statutory areas which the stakeholders and the agency believe need to be addressed during the 2011 Legislative Session and will send that with a summary of the public hearing and any further changes to the proposed rules and regulations to the Committee. If there remain areas of disagreement, the Committee expects that it will continue to hear from stakeholders concerned about the adopted rules and regulations.

Prepared by Corey Carnahan
Edited by Jill Shelley

Approved by Committee on:

August 16, 2010
(Date)