



REPORT

To: Kansas Legislature

From: Joint Committee on Administrative Rules and Regulations

Re: Report on the August 6, 2019, Meeting of the Joint Committee on Administrative Rules and Regulations

At its meeting on August 6, 2019, the Joint Committee on Administrative Rules and Regulations (Committee) reviewed for public comment rules and regulations listed below and provided its comments.

Secretary of State

KAR 7-47-1, audit implementation.

Request. The Committee requests additional information be provided concerning whether the Secretary of State is planning to promulgate rules and regulations related to the provisions of 2019 Sub. for SB 130. The Committee further requests Secretary of State Scott Schwab appear at the Committee's next meeting, scheduled for October 8, 2019, to address Committee concerns.

Concern. The Committee is concerned the procedures to randomly choose election races and precincts for audit may not be uniform across counties. The Committee suggests the rules and regulations specify to counties how to establish randomization procedure criteria.

Concern. If procedures for randomization are not made uniform across the state, the Committee suggests language to clarify who determines the procedure to randomize the selection of races and precincts to be audited, such as by replacing "solely by each county election officer and the secretary of state" with wording such as "by each county election officer with the approval of the secretary of state."

Kansas Bureau of Investigation

KAR 10-22-1, approved field tests.

After discussion, the Committee reported no comments.

Department of Wildlife, Parks and Tourism

KAR 115-2-1, amount of fees; KAR 115-2-7, revocation (was backcountry access pass, fee, exceptions and general provisions); KAR 115-5-3, furbearers, except otters, and coyotes, management units; KAR 115-5-3a, otters, management units; KAR 115-25-11, furbearers, open seasons and bag limits.

The Committee expresses its appreciation for the agency's elimination of the backcountry access pass and its associated fee, which will expand public access to Little Jerusalem Badlands State Park.

KAR 115-8-13a, electric-assisted bicycles.

After discussion, the Committee reported no comments.

Board of Examiners in Fitting and Dispensing of Hearing Instruments

KAR 67-1-8, potentially disqualifying civil and criminal records, advisory opinion, fee; KAR 67-2-4, examinations; KAR 67-5-5, fees.

KAR 67-1-8. The Committee is concerned that consideration of only those felonies related to the fitting and dispensing of hearing instruments may fail to potentially disqualify applicants who have been convicted of felonies related to protecting the general welfare and the duties and responsibilities of licensed persons as provided in KSA 74-120(b)(1). It notes certain crimes involving, for example, sex offenses or unlawful distribution of drugs would be disqualifying at a misdemeanor level, but not at a felony level. The Committee also suggests more clearly specifying the disqualifying crimes.

Department of Revenue, Alcoholic Beverage Control Division

KAR 14-6-4, revocation (was containers of cereal malt beverage, statement of alcohol content required).

After discussion, the Committee reported no comments.

Department of Commerce, Athletic Commission

KAR 128-5-1, professional boxing, professional kickboxing, professional bare-knuckle fighting, and professional full-contact karate contests; KAR 128-6-8, professional bare-knuckle fighting.

Concern. The Committee is concerned the sport of professional bare-knuckle fighting is being authorized by the Commission without prior legislative consideration. It notes KSA 74-50,182(o) does not list professional bare-knuckle fighting in the definition of “regulated sports,” but does list other sports mentioned in KAR 128-5-1.

Request. The Committee requests the Commission provide citations for peer-reviewed literature relied upon by the Commission and its medical staff in consideration of the regulation of bare-knuckle fighting, specifically related to injuries associated with the sport and forces experienced by the body.

Board of Accountancy

KAR 74-1-3, retaking the examination and granting of credits.

After discussion, the Committee reported no comments.

Kansas Dental Board

KAR 71-5-11, level II permit: parenteral conscious sedation; KAR 71-8-8, information for patients.

The Committee expresses its appreciation for the Board’s attention to this public safety issue.

Department of Revenue, Division of Vehicles

KAR 92-56-2, ignition interlock device, certification and standards.

Concern. The Committee is concerned with the privacy of certain data retained by ignition interlock vendors and manufacturers, including breath sample records and images of users who provide a breath sample. It requests information on how data are transferred, asks how the agency monitors for only lawful use of data being collected, and urges the agency to set standards in rules and regulations for protection of this data.

Concern. The Committee is concerned with potential issues regarding implementation of devices capturing images and monitoring of the new data generated by the devices. The Committee believes an expansion of the data collected and stored for use under the ignition interlock program should have been considered by the Legislature prior to promulgation of the changes to this rule and regulation.

Concern. In testimony, the agency representative stated the ignition interlock vendors had assured the agency no individual required to have an ignition interlock device would be required to pay for a replacement device meeting the requirements for digital images in this proposed rule and regulation. However, KAR 92-56-4 requires each ignition interlock

device installed at the direction of the Division of Vehicles be done at the driver's own expense, except as allowed by KAR 92-56-2, and proposed KAR 92-56-2(l) does not state a replacement will be installed at no cost. The Committee asks how the agency will assure no individuals will be charged for a replacement device.

Department of Agriculture, Division of Water Resources

KAR 5-21-7, revocation (was change in the use made of water from irrigation use to any other type of beneficial use, Western Kansas Groundwater Management District No. 1); KAR 5-25-2, well spacing; KAR 5-25-4, sustainable yield; KAR 5-25-22, movement of water rights affecting streamflow at Rattlesnake creek.

After discussion, the Committee reported no comments.

Department of Agriculture, Division of Animal Health

KAR 9-18-23, transfer, movement, adoption, or other permanent relocation of feline immunodeficiency virus-positive cats; KAR 9-23-1, revocation (was hobby kennel operators); KAR 9-23-2, revocation (was animal health and husbandry standards); KAR 9-23-3, revocation (was records).

Request. The Committee requests additional information be provided concerning reasoning behind the decision to allow feline immunodeficiency virus-positive felines to be adopted or permanently relocated.

EXPECTATIONS OF AGENCIES

Prior to filing rules and regulations with the Secretary of State, agencies are expected to review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Each agency is encouraged to include in the filing notice its website address where proposed rules and regulations can be located. In addition, if the agency accepts written comments *via* e-mail, it is expected the public notice will include this information, as are directions for e-mail requests for public accommodation. Finally, agencies are expected to verify the adoption by reference of any materials included in the regulations is properly completed as prescribed in the Department of Administration's current "Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations."

This report should be part of the public record on these regulations. The Committee may review the regulations the agency ultimately adopts, and it reserves any expression of legislative concern to that review.

To assist in that final review, agencies are expected to respond to each question or comment of the Committee and to inform the Committee and its Kansas Legislative Research Department (KLRD) staff, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes that have been made following the public

hearing. Agencies are expected to notify the Committee and KLRD, in writing, when the agency has adopted the regulations as permanent, delayed implementation of the regulations, or decided not to adopt any of the regulations.

Failure to respond to each and every comment contained in this report may result in a request from the Committee that a spokesperson from the agency appear before the Committee to explain the agency's failure to reply.