

SEP 27 2022

SCOTT SCHWAB
SECRETARY OF STATE

State of Kansas
Kansas Human Rights Commission
Notice of Public Hearing on Proposed Administrative Regulations

A public hearing will be conducted on December 16, 2022, at 11:00 a.m. in Suite 568-S of the Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas, to consider the amendment and revocation of rules and regulations of the Kansas Human Rights Commission on a permanent basis. The public hearing will be conducted in person and via video conferencing. Members of the public who wish to participate via video conferencing must request to do so, at least twenty-four hours before the hearing, by contacting Ruth Glover at (785) 296-3206 (or TYY at (785) 296-0245) or e-mail at Ruth.Glover@ks.gov.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Kansas Human Rights Commission, 900 S.W. Jackson, Suite 568-S, Topeka, KS 66612-1258 or by email to Ruth.Glover@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the proposed amendments and revocations of the regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Ruth Glover at (785) 296-3206 (or TYY (785) 296-0245) or by email to Ruth.Glover@ks.gov. The north entrance to the Landon State Office Building is accessible. Handicapped parking is located at the south end of the Landon State Office Building, across the street from the north entrance to the building, and on Ninth Street, just around the corner from the north entrance to the building.

Summaries of the proposed amendments and revocations and their economic impact follow. (Note: Statements indicating that a regulation is not anticipated or expected to have economic impact are intended to indicate that no economic impact on the Kansas Human Rights Commission, other state agencies, state employees, other governmental entities, persons subject to the proposed regulations, or the general public have been identified.)

Copies of the proposed amendments and revocations of regulations and of the Economic Impact Statement can be located at http://www.khrc.net/Proposed_Regulations/Proposals.pdf. They can also be obtained from the Kansas Human Rights Commission, 900 S.W. Jackson, Suite 568-S, Topeka, KS 66612-1258 or by email to Ruth.Glover@ks.gov.

Amendment of K.A.R. 21-34-1 – Definitions. The amendments improve sentence structure, provide consistency with both the Kansas Act Against Discrimination (“KAAD”) and federal administrative regulations and remove terms that are outdated or otherwise duplicative of the KAAD. More specifically, current 21-34-1(e) and (g) are deleted because the terms “regarded as having such an impairment” and “major life activities” are defined in K.S.A. 44-1002(l) and (m).

The definition of “physical or mental impairment” is amended to eliminate a non-exhaustive list of body organs or body systems that may result in a physical impairment; and to remove the outdated term “mental retardation” within the mental impairment component of the definition. The term “substantially limits” is amended to reflect the broad coverage expressed in K.S.A. 44-1006(c) and to be consistent with federal regulations. No economic impact is anticipated.

Revocation of K.A.R. 21-34-17 – Substantially limit; criteria for determination. This proposal revokes this regulation as outdated and no longer consistent with the KAAD’s express statement to construe the term disability in favor of broad coverage of individuals to the maximum extent permitted by the KAAD. Additionally, the stated requirement that an individual must be “significantly restricted” from performing a major life activity is inconsistent with federal administrative regulations. No economic impact is anticipated.

Revocation of K.A.R. 21-34-18 – Substantially limit; definition with respect to the major life activity of “working”; criteria for determination. This proposal revokes this regulation as outdated and no longer necessary. It is not warranted to highlight this one particular “major life activity,” an activity that is rarely relied upon following amendments to the KAAD and the ADAAA. No economic impact is anticipated.

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21-34-1. Definitions. Each of the following terms, as used in this article of the commission's regulations and in K.S.A. 44-1001 et seq. and amendments thereto, shall have the meaning specified in this regulation:

(a) "Covered entity" means an employer, labor organization, employment agency, or joint labor-management committee.

(b) "Direct threat" means a significant risk of substantial harm to the health or safety of the an individual or others that cannot be eliminated or reduced by reasonable accommodation.

(c) "Essential function" means the fundamental job duties of the employment position ~~the~~ that an individual with a disability holds or ~~desires~~ seeks. The term "essential function" ~~does~~ shall not include the marginal functions of the position.

(d) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

~~(e) "Is regarded as having such an impairment" means:~~

~~(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting a limitation;~~

~~(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or~~

~~(3) Has none of the impairments defined in subsections (h)(1) or (2) of this section but is treated by a covered entity as having an impairment.~~

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(f) (e) "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the controlled substances act, (21 U.S.C. 812). This term does shall not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by controlled substances act or other provisions of federal or Kansas law.

~~(g) "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

(h) (f) "Physical or mental impairment" means either of the following:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body organs or body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, ~~such as mental retardation~~ including an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) (g) "Qualified individual with a disability" means an individual with a disability who satisfies meets the requisite skill, experience, education, and other job-related requirements of the employment position that the person individual holds or desires,

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seeks and who, with or without reasonable accommodation, can perform the essential functions of the position.

(j) (h) "Qualification standards" means the personal and professional attributes, including the skill, experience, education, physical, medical, safety and other requirements, established by a covered entity as requirements ~~which~~ that an individual must meet in order to be eligible for the position held or ~~desired~~ sought.

~~(k)~~ (i) "Substantially limits," when used regarding an individual, means: that the individual has, is regarded as having, or has a record of having a physical or mental impairment that affects or is perceived as affecting the individual's ability

~~(1) unable to perform a major life activity that the average person~~ most people in the general population can perform; ~~or~~

~~(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity. This term shall not require that the individual be prevented, or significantly or severely restricted, from performing a major life activity.~~

(Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1002, K.S.A. 44-1006, and K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992; amended P-_____.)

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21-34-17 and 21-34-18. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992; revoked P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Human Rights Commission
Agency

Catherine Walter
Agency Contact

785-554-9550
Contact Phone Number

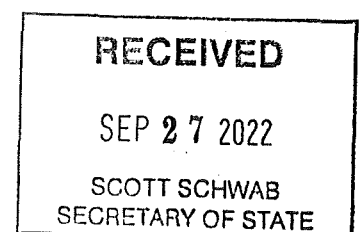
21-34-1, -17, -18
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

These are regulations pertaining to definitions applicable to complaints of disability discrimination filed with the Kansas Human Rights Commission ["KHRC"] under the Kansas Act Against Discrimination ["KAAD"], K.S.A. 44-1001 *et seq.* Several K.A.R. definitions are deleted because they duplicate definitions set forth in the KAAD. There are also minor amendments that remove outdated or unnecessary language and update other language to be consistent with KSA 44-1006(c)(1)'s stated intent to provide broad coverage to the definition of disability. Two other regulations that expand on the term "substantially limits" are revoked because that term is now more expansively covered in both the statutory language of the KAAD and in federal regulations.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

N/A. Note the federal Equal Employment Opportunity Commission ["EEOC"] has similar, but more complex, definitions in 29 C.F.R. 1630.2.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

No effect on business activities and growth.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

No economic effect; no implementation or compliance costs.

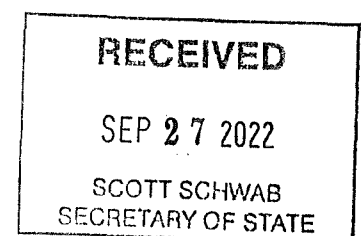
- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Businesses covered by the Kansas Act Against Discrimination.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There is no added cost; the benefit is removal of unnecessary regulations.

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- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

N/A – no cost or economic impact from proposed amendments.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Because the proposed revisions do not change current operating procedures, there should be no economic impact.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

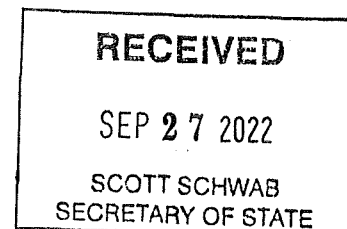
No change.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There is no economic impact.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of

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Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

Not applicable.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Emails soliciting input and inviting responses to the draft regulation changes have been sent to the following:

1. Kansas Equality Coalition
2. Kansas Bar Association
3. Topeka Bar Association
4. Kansas City Bar Association
5. Wichita Bar Association
6. Douglas County Bar Association
7. ACLU Kansas
8. Kansas SHRM (Society of Human Resource Management)
9. Kansas Chamber of Commerce
10. Wichita Chamber of Commerce
11. League of Kansas Municipalities
12. Kansas Association of Counties, and
13. Kansas NAACP
14. Kansas Council on Developmental Disabilities
15. Kansas Department for Aging and Disability Services
16. Kansas Commission on Disability Concerns
17. Disability Rights Center of Kansas

The KHRC also sent out a message on its Twitter account regarding the proposed regulations, with requests for input and comment.

Section IV

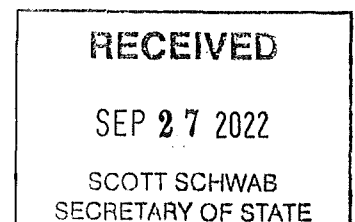
Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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