

**JCARR**

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**Report on Oversight Activities of the**

**JOINT COMMITTEE ON**

**ADMINISTRATIVE RULES**

**AND REGULATIONS**

**July 2018—June 2019**

**Kansas Legislative Research Department  
August 2019**

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## INTRODUCTION

Since 1939 (L. 1939, Ch. 308), the Kansas statutes have provided for legislative oversight of rules and regulations. For more than 40 years, that oversight generally allowed the Legislature to reject, modify, or revoke an administrative rule and regulation. The Joint Committee on Administrative Rules and Regulations was formed in 1977 to review all filed rules and regulations and to recommend to the Legislature whether to amend, revoke, or reject the regulations reviewed. In 1984, the Kansas Supreme Court found provisions allowing the Legislature to rewrite or reject administrative rules and regulations to be unconstitutional (*State, ex rel. Stephan v. Kansas House of Representatives*, 236 Kan 45).

Statutes related to rules and regulations underwent extensive revisions in 1988. KSA 2018 Supp. 77-436 specifies the composition and duties of the Joint Committee on Administrative Rules and Regulations. It states all rules and regulations filed each year with the Secretary of State are subject to review by the Committee, which is authorized to “introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations.” The Act was further revised in 2010, primarily with updates to procedures, and more extensively in 2011 and 2018 (as noted in the reports for those years), but the Committee’s basic charge has not changed. The 2011 bill also designated KSA 2018 Supp. 77-415 through 77-438 as the Kansas Rules and Regulations Filing Act.

A brief history of oversight from 1939 through May 2010 is provided in the *Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations, June 2009-May 2010*, available from the Kansas Legislative Research Department. Reports including information for 2010-2011, 2011-2012, and 2012-2013 are also available.

This volume contains a report for the current year, 2018-2019, plus reports for the previous five years:

- 2017-2018;
- 2016-2017;
- 2015-2016;
- 2014-2015; and
- 2013-2014.

More information on rules and regulations heard by the Committee in recent years and state agency responses to Committee comments is available from the Kansas Legislative Research Department.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2018 through June 2019**

From July 2018 through June 2019, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 23 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met seven times. (Note: The meeting not included in the table below was on July 9, 2018. It was determined the proposed rules and regulations expected to be formally presented at that meeting had not received the approval of the Division of the Budget required by 2018 HB 2280, which had become effective June 7, 2018, and no set of regulations would be heard by the JCARR unless it had received approval from the Division of the Budget.) Meeting dates at which proposed rules and regulations were heard, the state agencies appearing before the Committee, and the main topics of the proposed rules and regulations are included in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2018 – June 2019</b>					
<b>Agency</b>	<b>October 3, 2018</b>	<b>December 10, 2018</b>	<b>January 7, 2019</b>	<b>March 11 and 28, 2019</b>	<b>May 14, 2019</b>
<b>Agriculture</b>		Industrial hemp	Industrial hemp (continued)		
<b>Agriculture – Animal Health</b>		Pet Animal Act			
<b>Attorney General</b>					Elder and Dependent Adult Abuse Prevention Council <sup>(2)</sup>
<b>Behavioral Sciences</b>			Diagnostic and statistical manual; Fees		
<b>Children and Families</b>		Eligibility for public assistance programs <sup>(1)</sup> ; Child abuse and neglect			
<b>Corporation Commission</b>				Motor carriers	
<b>Cosmetology</b>		Licensing, criminal history review			
<b>Emergency Medical Services</b>		Licensing			
<b>Healing Arts</b>		Physician assistants; Acupuncturist licensure	Telemedicine	License fees	
<b>Health and Environment (KDHE)</b>	Fingerprint-based background checks for	Fees, radiation control			Immunizations; PCB facilities (revocations) <sup>(2)</sup>

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2018 – June 2019</b>					
<b>Agency</b>	<b>October 3, 2018</b>	<b>December 10, 2018</b>	<b>January 7, 2019</b>	<b>March 11 and 28, 2019</b>	<b>May 14, 2019</b>
	child care workers; Timing of screenings of newborns; Cancer registry				
<b>KDHE – Mined Land Conservation and Reclamation</b>	Surface mining				
<b>Human Rights</b>	Proceedings (revocation)				
<b>Indigents' Defense</b>			Attorney compensation		
<b>KBI</b>					Asset seizure and forfeiture repository
<b>Labor – Workers Compensation</b>	Filings	Data reporting	Fees for medical services		
<b>Mortuary Arts</b>		Licensing, criminal history review			
<b>Nursing</b>				Multistate licenses	
<b>Pharmacy</b>	Drug delivery systems; disciplinary actions			License fees	
<b>Real Estate</b>	Licenses				
<b>Real Estate Appraisal</b>	Education and experience requirements				
<b>Regents</b>					Fees <sup>(2)</sup>
<b>Technical Professions</b>			Reciprocity licensing requirements		Licensing, criminal history review <sup>(2)</sup>
<b>Wildlife, Parks and Tourism</b>	Camping fees; fish bait	Hunting of birds; fishing; backcountry access		Licenses; big game hunting; fur harvesting	Big game hunting

(1) Proposed changes to KAR 30-4-38, 30-4-55, 30-4-70, 30-4-76, 30-4-77, 30-4-92, and 30-4-93 had not been adopted as of July 1, 2019.

(2) The proposed rules and regulations had not been adopted as of July 1, 2019.

## **Comments to Agencies**

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses. All comments and responses are available for public inspection.

Examples of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### ***Authority***

- Department of Health and Environment, fingerprint-based background checks for child care workers, October 3, 2018. The Committee questioned the agency's authority to require a fee for the costs of background checks when KSA 2018 Supp. 65-516(g) requires the agency to adopt rules and regulations that "fix a fee for fingerprinting." (The agency responded that KSA 2018 Supp. 65-516, taken in its entirety, states the fingerprinting fee charged by the Department includes and may be used to pay the cost of taking fingerprints, processing fingerprints, and conducting background checks.)

### ***Clarity***

- Department for Children and Families, eligibility for certain services, December 10, 2018. The Committee suggested clarification of two terms used in the proposed rules and regulations.
- Board of Healing Arts, late renewal fee, March 11, 2019. The Committee suggested the agency clarify the language of the rule and regulation at the public hearing to make it clear the late renewal fee is a fee in addition to the license renewal fee. (In its response, the agency described the steps it took in the notice of public hearing, an attachment sent to the agency's public notice list, and an explanation at the hearing.)

### ***Compliments***

- Department of Health and Environment, fees for radiation control licensing and inspection, December 10, 2018. The Committee commended the agency for informing those impacted before going forward with the changes to the rules and regulations.
- Corporation Commission, motor carrier safety requirements, March 28, 2019. The Committee commended the agency for its work to streamline these rules and regulations.

- Board of Regents, certain fees for private and out-of-state post-secondary education institutions, May 14, 2019. The Committee expressed its appreciation for the elimination of these specific fees and the agency's review of whether such fees were efficient to administer.

### ***Effects on Stakeholders***

- Department of Wildlife, Parks and Tourism, turkey hunting, December 10, 2018. While noting its awareness that the rules and regulations presented are exempt, the Committee expressed its concern with the economic impact of closing certain turkey hunting units and encouraged consideration of this impact. (The agency responded that science-based wildlife management is foremost, but that is balanced against societal desires and economic impacts. It noted the Wildlife, Parks and Tourism Commission did not adopt the proposed changes.)

### ***Fees***

- Department of Wildlife, Parks and Tourism, fees to access Little Jerusalem State Park, December 10, 2018. The Committee stated its concern that the fee proposed would limit the number of people with access to a portion of the park. (The agency responded the Department and the Nature Conservancy are committed to providing access to the park while protecting its unique assets, and the agency and the organization would jointly evaluate the fee and access concerns and make adjustments, as necessary.)
- Board of Cosmetology and Board of Mortuary Arts, fees for advisory opinions on whether an individual's civil or criminal history will disqualify the individual from licensure, December 10, 2018. The Committee asked the boards to consider setting advisory opinion fees to be equal to the appropriate license fee, but not more than \$50. (Both boards responded that costs for preparing the non-binding advisory opinion exceed \$50 and they would retain the \$50 fee proposed. They noted the fees for most licenses exceed that amount.)

### ***Information Requests***

- Real Estate Appraisal Board, licensure, October 3, 2018. The Committee asked the agency to coordinate with the Legislature to hold informational hearings on the topic of the profession of real estate appraisal and barriers and incentives to licensure.
- Department of Labor, Division of Workers Compensation, electronic filing, October 3, 2018. The Committee asked the agency to report to the Committee on the implementation of the electronic filing system after it became operational.
- Department of Wildlife, Parks and Tourism, camping site fees, October 3, 2018. The Committee asked the agency to provide additional information regarding electricity rates for long-term recreational vehicle campsites. (The agency provided its electricity costs, by park, showing electric cost per month from July 2007 through October 2019. It stated campsites are not individually metered.)

- Board of Pharmacy, disciplinary actions, October 3, 2018. The Committee asked the agency how other states handle disciplinary actions taken against similar licensees and whether other states require licensees to report pending disciplinary actions in outside jurisdictions. It further asked for information regarding reporting of felony charges. (The agency responded that a survey indicated at least 12 states have law requiring licensees to report disciplinary actions, including Nebraska and Iowa. It further stated the National Association of Boards of Pharmacy has created a repository for state disciplinary actions and ongoing investigations and many other Kansas regulatory boards require similar reporting. It stated it had discussed the concerns about felonies with the Office of the Attorney General and all parties believed the language of the rule and regulations satisfies the Board's need to protect the public and is consistent with its statutory authority.)
- Department for Children and Families, child abuse and neglect, December 10, 2018. The Committee requested a copy of a policy regarding case finding decisions related to determinations of child abuse or neglect. (The agency provided a copy of the policy.)
- Department of Wildlife, Parks and Tourism, hunting while riding a horse, March 11, 2019. The Committee requested information on species for which hunting while riding a horse is permissible. (The agency responded that the use of horses and mules is permissible while hunting big game and species including rabbits, hares, and squirrels and for furbearers and coyotes. It noted use of horses and mules is not allowed for turkey hunting.)
- Attorney General, Elder and Dependent Adult Abuse Prevention Council, May 14, 2019. The Committee requested information on the timing of the formation of the Elder and Dependent Adult Abuse Prevention Council and the dissolution of the Senior Consumer Protection Advisory Council. The Committee also recommended that, if the new Council is found to be effective and efficient in the duties outlined in the rule and regulation creating it, the agency consider recommending legislation to place the Council in statute.

### ***Program Concerns***

- Real Estate Commission, agency investigation of licensees, October 3, 2018. The Committee expressed its concern that a licensee could be the subject of a civil lawsuit but would not be investigated by the agency until the lawsuit had reached a final disposition. The Committee asked the agency to provide information about the similar processes of other states. (The agency responded it will place an investigation on hold when the agency becomes aware of civil litigation related to the same matter and keep the investigation on hold until the civil litigation is completed. It reported several neighboring states have policies like that of Kansas, although officials in Nebraska responded they would continue investigating the complaint regardless of civil litigation if there is clear evidence of wrongdoing by the licensee and there is imminent risk to the public. The agency further stated the Office of the Attorney General stated the practice the agency has adopted is used by most other Kansas boards and commissions. It further noted it continues investigation if there is criminal litigation.)

- Department of Agriculture, industrial hemp research and cultivation advisory board, January 7, 2019. The Committee suggested the agency consider the introduction of legislation or promulgation of additional rules and regulations to specifically outline the make-up of the advisory committee. It further suggested the advisory committee's legislative membership be balanced with respect to party affiliation and legislative chamber and, if possible, geography. It also suggested including representatives of state institutions of higher education with a potential interest in industrial hemp research. (The agency responded it was open to those suggestions.)
- Board of Indigents' Defense Services, reimbursement rates for assigned counsel, January 7, 2019. The Committee recognized the reimbursement rate for assigned counsel is inadequate. It requested the agency conduct a survey to determine the proper and adequate rate and forward that information to Senate Committee on Ways and Means, the House Committee on Appropriations, and the House and Senate Committees on Judiciary. (The agency provided a copy of a letter sent to the chairpersons of the specified committees. The letter describes the systems of surrounding states and the federal government and provides information about comparable reimbursement rates.)

## **Legislative Action**

Of the 68 bills enacted in 2019, 13 contained provisions authorizing, requiring, moving, or clarifying authority for state agency rules and regulations. The following list summarizes those statutory changes. Statutory deadlines that were specified are mentioned. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2019 *Summary of Legislation*, available from the Kansas Legislative Research Department's website. A table listing statutes enacted in 2013 through 2019 that required rules and regulations is included at the end of this report.

### ***911 Coordinating Council***

**HB 2084** revises the Kansas 911 Act to, among other things, state no rules and regulations adopted by the 911 Coordinating Council (Council) or other Council requirements may create a mandatory certification program of public safety answering point (PSAP) operations or PSAP emergency communications personnel.

### ***Agriculture, Department of***

**Senate Sub. for HB 2167** creates the Commercial Industrial Hemp Program, modifies the Alternative Crop Research Act, and requires the Department of Agriculture (KDA) to create and maintain a registry of all hemp processors operating within the state. The bill requires the Secretary of Agriculture to promulgate rules and regulations to effectuate the production of commercial industrial hemp and to implement a plan submitted to the U.S. Department of Agriculture regarding monitoring and regulating the commercial production of industrial hemp within Kansas in accordance with federal law; extends the deadline for promulgating rules and regulations regarding the research and development of industrial hemp from December 31, 2018, to December 31, 2019; and authorizes rules and regulations for registration of hemp processors. The bill prohibits the KDA from promulgating rules and regulations concerning the recording of license plates.

## ***Attorney General***

**HB 2290** requires the Attorney General to appoint a Kansas Victim and Notification Everyday (VINE) coordinator and work with interested parties, including sheriffs, throughout the state to oversee the statewide implementation of the VINE system. The bill authorizes the Attorney General to promulgate rules and regulations necessary to carry out the provisions of this section of the bill.

## ***Citizens Utility Ratepayer Board***

Executive Order 11-02 ordered the Citizens Utility Ratepayer Board (CURB) to receive proposed rules and regulations and, at CURB's discretion, to review those proposed rules and regulations for their impact on Kansas citizens and provide comments to the Office of the Governor. The order requires executive agencies to send copies of proposed rules and regulations to CURB after getting approval from the Department of Administration and the Attorney General's Office on those proposed rules and regulations. However, **House Sub. for SB 25**, Section 60, prohibits CURB from using state funding in the Utility Regulatory Fee Fund for any duties pursuant to Executive Order No. 11-02 in state fiscal year 2020.

## ***Commerce, Department of***

**HB 2044** establishes a new income tax credit for tax years 2019 through 2023 and authorizes the Secretary of Revenue to promulgate rules and regulations to establish criteria for qualifying for the credit. The credit is equivalent to 15.0 percent of expenditures on goods and services purchased from qualified vendors. The definition of a "qualified vendor" includes a business that does business primarily in Kansas, or has substantially all of its production in Kansas, and at least 30 percent of whose employees are individuals with disabilities. The vendor also must meet additional requirements, including those detailed in the bill related to health insurance, wages, and an integrated setting. The nonrefundable credit is capped at \$500,000 per qualified vendor each tax year, with a cumulative cap of \$5.0 million.

## ***Fire Marshal, State***

**SB 128** directs the State Fire Marshal to adopt rules and regulations to require administrators of public and private schools and educational institutions, except community colleges, colleges, and universities, to conduct at least three crisis drills each school year at some time during school hours, aside from the regular end-of-day dismissal. It also authorizes the State Fire Marshal to authorize a variance for the number or manner of fire, tornado, and crisis drills for students receiving special education or related services.

## ***Healing Arts, State Board of***

**HB 2119** requires the Board of Healing Arts (Board) to adopt rules and regulations as necessary to implement provisions that allow a business entity to which the Board has issued a certification of authorization to employ or contract with one or more licensees of the Board, for the purpose of providing professional services for which such licensee holds a valid license issued by the Board.

### ***Health and Environment, Department of***

**HB 2201** transfers authority for rules and regulations related to tuberculosis care to the Secretary of Health and Environment from the Secretary for Aging and Disability Services, updating statutory references necessitated by 2012 Executive Reorganization Order No. 41.

### ***Insurance, Department of***

**HB 2177** creates law permitting life insurance companies that offer fixed index annuities (FIAs) to utilize an alternative methodology accounting for FIA hedging and associated reserves. The bill authorizes the Commissioner of Insurance to adopt rules and regulations necessary to implement the provisions.

### ***Investigation, Kansas Bureau of***

**HB 2248** amends the Scrap Metal Theft Reduction Act to make the Kansas Bureau of Investigation (KBI) responsible for establishing and maintaining the scrap metal database. The bill requires the KBI to promulgate rules and regulations specifying which information and photographs required to be collected by scrap metal dealers are to be entered into the database and prescribing the manner for submitting such information and photographs.

### ***Real Estate Commission***

**SB 60** authorizes the Real Estate Commission to adopt rules and regulations related to experience required for licensure and removes authority for rules and regulations to establish alternative licensing criteria for applicants residing in a county with a population of no more than 20,000. [*Note: No rules and regulations specific to applicants residing in counties with populations of no more than 20,000 were found.*]

### ***Regents, Board of***

**SB 199** authorizes the Board of Regents to adopt rules and regulations to implement and administer the provisions of the Accelerating Opportunity: Kansas (or "AO-K") program, described by the bill as a career pathways program model that assists students in obtaining a high school graduation equivalency credential, becoming ready for transferable college-level courses, and earning an industry credential.

### ***Revenue, Department of***

**SB 70** authorizes the holder of a temporary permit to offer for sale, sell, and serve alcoholic liquor for consumption on licensed or unlicensed premises, or on premises that are otherwise subject to a separate temporary permit, that may be open to the public, subject to the terms of such permit. It states holders of these temporary permits are subject to rules and regulations adopted under the Kansas Liquor Control Act and the Club and Drinking Establishment Act, and it authorizes the Secretary of Revenue to adopt rules and regulations for the enforcement of the new requirements related to temporary permits.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2017 through June 2018**

From July 2017 through June 2018, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 23 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met five times. Meeting dates, the state agencies appearing before the Committee, and the main topics of the proposed rules and regulations are included in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2017 – June 2018</b>					
<b>Agency</b>	<b>August 2, 2017</b>	<b>October 24, 2017</b>	<b>January 3, 2018</b>	<b>March 5, 2018</b>	<b>April 24, 2018</b>
<b>Accountancy</b>		Various			
<b>Administration</b>	Employee leave				
<b>Agriculture</b>	Testing seeds				Fees for food and processing facilities
<b>Agriculture – Conservation</b>				Water quality (sediments and nutrients)	
<b>Agriculture – Weights and Measures</b>		Fees			
<b>Attorney General</b>	Scrap metal dealers (repeal) <sup>(1)</sup>		Human trafficking detection course		
<b>Corporation Commission</b>			Motor carrier hours of service		Oil and gas conservation assessments
<b>Emergency Medical Services</b>		Continuing education			
<b>Fire Marshal</b>	Building codes; fireworks; hazardous materials (withdrawn)	Fire codes; fireworks; hazardous materials <sup>(2)</sup>			
<b>Healing Arts</b>		Acupuncturists			
<b>Health and Environment (KDHE)</b>	Surface water quality	Radioactive materials; air quality	Infectious or contagious diseases; Evidential breath alcohol devices; Public water supply systems		Background checks at child care facilities

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2017 – June 2018</b>					
<b>Agency</b>	<b>August 2, 2017</b>	<b>October 24, 2017</b>	<b>January 3, 2018</b>	<b>March 5, 2018</b>	<b>April 24, 2018</b>
<b>Human Rights</b>	Filing complaints				
<b>Insurance</b>		Worker's compensation exemption		Viaticating a policy <sup>(3)</sup> ; Risk-based capital instructions	
<b>Labor</b>	Amusement rides				
<b>Pharmacy</b>		Various		Compounding drugs; Technician training	
<b>Real Estate Appraisal</b>			Professional standards	Experience	
<b>Real Estate Commission</b>			Brokerage documents		
<b>Regents</b>	Fees				Tuition for those military-related
<b>Revenue</b>	License plate replacement	Tax credits for student scholarships			
<b>Revenue – Alcoholic Beverage Control</b>					Cereal malt beverages
<b>Veterinary Examiners</b>		Standards for veterinarian licensure examinations			
<b>Wildlife, Parks and Tourism</b>		Fees; Fishing	Threatened and endangered species	Deer season	Elk and antelope seasons; Public lands usage

(1) The repeal of these rules and regulations was not finalized as of July 1, 2019.

(2) Revocations of KAR 22-11-8 and 22-18-3 were not finalized as of July 1, 2019; proposed changes to KAR 22-6-5 had not been finalized as of July 1, 2019.

(3) The proposed rule and regulation was withdrawn.

## **Comments to Agencies**

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

Examples of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### ***Adoption by Reference***

- Department of Health and Environment, radioactive materials, October 24, 2017. With regard to four of the proposed rules and regulations that adopt federal regulations by reference, the Committee specified changes or corrections to the federal regulations adopted subsequent to the version the agency proposed for adoption in the rules and regulations and asked whether the agency wished to include those amendments. (For three of the four, the agency agreed with the Committee and included the subsequent amendments. For one, the agency determined adoption of the later version was not necessary.)
- Department of Health and Environment, public water supply systems, January 3, 2018. The Committee noted a proposed rule and regulation would replace a reference to a subpart in the Code of Federal Regulations with a reference to a single federal regulation and suggested the agency reference all the regulations in the subpart. The Committee also suggested the agency make additional substitutions in the language of the rule and regulation to refer to state rules and regulations rather than to federal regulations. (The agency responded it revised the rules and regulations as suggested.)

### ***Authority***

- Department of Health and Environment, infectious and contagious diseases, January 3, 2018. The Committee expressed its concern that local health officers are given the same authority as the Secretary of Health and Environment with regard to altering isolation, quarantine, and rabies control requirements included in documents adopted by reference. (The agency responded KSA 65-119 conveys responsibility of containment of disease to the local health officer and KSA 65-126 allows the Secretary to intervene if necessary; it further stated consensus agreement is the typical decision-making process for managing public health threats.)
- Kansas Corporation Commission, motor carrier hours of service, January 3, 2018. The Committee noted the agency adopted without modification federal regulations regarding Federal Motor Carrier Safety Administration (FMCSA) determinations regarding supporting documents and problems with electronic logging devices and asked whether state terms could be substituted. (The agency responded it consulted with the Office of the Attorney General and, because the agency does not run the

supporting document self-compliance system, it should honor the decisions of the FMCSA regarding it. The agency added clarifying language to the rule and regulation.)

### **Clarity**

- Department of Labor, inspection of amusement rides, August 2, 2017. The Committee requested clarification of the term “reasonable period of time to comply.” (The agency stated no members of the public raised concern about the term, the agency determined the term is legally sufficient, and the rule and regulation as proposed was not modified.)
- Department of Health and Environment, infectious and contagious diseases, January 3, 2018. The Committee suggested defining “excess” as used in the definition of “cluster, outbreak, or epidemic.” (The agency responded a definition is not provided due to the number of variables involved. It stated determination of a cluster, outbreak, or epidemic requires consultation among responsible parties involved.)
- Department of Health and Environment, infectious and contagious diseases, January 3, 2018. The Committee expressed its concern with the definitions of “isolation” and “quarantine” in a reference document adopted by a proposed rule and regulation with regard to the treatment of persons and animals. (The agency responded it had revised the department document adopted by reference to remove “or animals” from the definitions of “quarantine” and “isolation” and updated the rule and regulation to adopt the revised document.)
- Department of Health and Environment, public water supply systems, January 3, 2018. The Committee noted one rule and regulation required electronic submission of documents within six months of notification from the agency but a proposed rule and regulation would require a community water supply system to mail a copy of a report to the agency. (The agency responded it changed the requirement for the report to be mailed to a requirement the report be “distributed.”)
- Department of Revenue, Division of Alcoholic Beverage Control, records of cereal malt beverage retailers, April 24, 2018. The Committee suggested “within seven business days” be added to a rule and regulation requiring documents stored off-site to be available. (The agency responded it had adopted the suggestion.)

### **Compliments**

- Department of Insurance, workers compensation, affidavit of exempt status, October 24, 2017. The Committee expressed its thanks to the agency for obtaining further input from interested parties on this rule and regulation and making appropriate modifications. (*Note: A version of this rule and regulation had been presented to the Committee May 16, 2017. At that time, the Committee had concerns about whether the agency had the authority for the rule and regulation as then proposed.*)
- Department of Health and Environment, public water supply systems, January 3, 2018. The Committee commended the agency for taking steps to ensure state

primacy for drinking water regulations. It further commended the agency for the thorough information in the economic impact statement, for the professional testimony provided, and for addressing committee concerns.

### **Effects on Stakeholders**

- Department of Agriculture, seed sales, August 2, 2017. The Committee expressed its concern about the fees as they apply to farmer-to-farmer sales and requested the agency consider a threshold or other method to exclude those engaged in farmer-to-farmer sales. (The agency responded that, because the definition of “retailer” in KSA 2-1415(jj) does not contain an exemption and each retailer must register, the agency is unable to set a threshold or otherwise exempt farmer-to-farmer sales.)
- Department of Labor, inspection of amusement rides, August 2, 2017. The Committee expressed its concern with the impact of the rules and regulations on the agri-tourism industry. (The agency responded the rules and regulations apply to every amusement ride covered by the new law. That law was amended in 2018 House Sub. for SB 310 to exclude “registered agritourism activities” [for which the definition is the same as in the Agritourism Promotion Act], hayrack rides, and barrel trains.)
- Department of Health and Environment, air pollution control, October 24, 2017. The Committee expressed its concern that the Economic Impact Statement (EIS) did not reflect the actual dollar impact on those in the regulated community and to consumers and requested the EIS be revised. (The agency responded the projected economic impact to regulated industry would exceed the ten-year average by \$68,898. The agency postulated what it termed a minimal increment to operating cost would be absorbed by the entities and not passed through to the consumer. It provided an analysis based on source category, e.g., utilities, chemical manufacturing.)
- Department of Wildlife, Parks and Tourism, fees associated with private cabins on certain public lands, October 24, 2017. The Committee expressed its concern with the increase in fees and asked whether the increase could be used to reduce other fees deposited into the Park Fee Fund. (The agency responded the Bureau of Reclamation owns the lakes in question and required, at renewal of the agency’s master lease of the properties, that permittees for any private exclusive use of public lands pay a fair market value for the privilege. The Bureau of Reclamation commissioned an appraisal of the cabin lot sites, and the proposed rule and regulation reflected the results of the appraisals and the requirement to raise those permit fees. The response stated the agency had met with cabin owners and stated to them its intent to use the increased fees from each location at that location. It further stated such use could allow the agency to redirect some funding to address needs elsewhere in the park system.)

### **Fees**

- Board of Accountancy, fees, October 24, 2017. The Committee expressed its concern with proposed fee increases with a potential impact estimated to be as much as 22 percent of the agency’s fiscal year 2018 budget. (The agency responded it had

not raised fees since 1997 for certificates, 1999 for permits, and 2001 for firm registrations because there had been increases in the numbers of those paying the fees. Since 2009, out-of-state certified public accountants have been allowed to practice in Kansas without requiring them to be individually licensed. That and changing demographics have significantly reduced the fee fund and, without the fee increase, the agency would exhaust its fee fund balance during FY 2020.)

- Department of Health and Environment, air pollution control, October 24, 2017. The Committee expressed its concern with three-fold increases proposed in Class I operating permit fees and the increase in the per-ton emissions fee to cover the expenses of the air pollution program and stated it believed the issue should have been brought before the proper legislative budget committee for consideration as a funding issue. (The agency responded by describing options it considered based on stability, potential use as match for federal funding, equity to the regulated community, and potential for generating sufficient revenue to maintain authority to administer the Class I program. It stated the Bureau of Air had communicated the concerns to the regulated community over the prior three years. It further stated amounts received for emissions, construction application fees, and asbestos fees were less than original projections by a total of approximately \$1.2 million. It stated the Bureau was working with agency upper management on a subsequent plan of action to present to the regulated community.)
- Department of Agriculture, food processing plant fees, April 24, 2018. The Committee expressed its concern with the amount of the increases in fees at one time and the stated intent to raise fees to cover expenses as they increase over several years. (The agency responded the decision to increase licensing fees as proposed was based on a desire to minimize the cost of analysis and reduce the need to spend time updating forms and websites and in drafting amended regulations, and that it received no public opposition to the increases.)
- Corporation Commission, oil and gas assessments, April 24, 2018. The agency asked the agency to provide additional information justifying the amount of the proposed increase, stating it recognizes fee sweeps impacted the balances of the Conservation Fee Fund (CFF). (The agency responded the lack of horizontal well drilling activity and the associated increase in production in recent years has reduced revenues and the agency projects continued decreases in revenues. It noted the fee sweep of July 2015 was contemporaneous with reductions in revenues and also that 2015 HB 2231 doubled the amount of CFF moneys to be transferred to the Abandoned Well Plugging Fund. It provided month-to-month balance sheets.)

### ***Information Requests***

- Board of Veterinary Examiners, controlled substances, October 24, 2017. The Committee expressed its concern with distribution of controlled substances by veterinarians and requested information on amounts being prescribed and how the Board tracks this information. (The agency responded it oversees the distribution of controlled substances by veterinarians by inspecting each veterinary premises' controlled substance ledger and comparing current inventory to the ledger. The agency also reported it requests drug distributor shipment histories and monitors the histories for unusual product purchasing.)

- Department of Agriculture, food processing plant fees, April 24, 2018. The Committee requested the checklist of items inspected at food processing plants. (The agency provided the inspection checklists for food processing plants and food establishments.)

### ***Program Concerns***

- State Fire Marshal, building codes, August 2, 2017. The Committee suggested consideration be given to withdrawing the proposed rules and regulations due to the level of concern expressed by representatives of municipalities and others in the building trade industry. (The proposed rules and regulations were withdrawn.)
- Human Rights Commission, filing of complaints, August 2, 2017. The Committee asked the agency to reconsider removing language that allows filing with any commission employee as an option. (The agency reported it reviewed research regarding the robustness of its email data services and was confident the Commission would receive emailed filings in a timely manner. It also reported concerns with potential trespassing and using filing with an employee to harass the employee. It reported the rule and regulation was adopted without change.)
- Attorney General, Scrap Metal Theft Reduction Act, August 2, 2017. The Committee expressed its concern that all rules and regulations pertaining to the Scrap Metal Theft Reduction Act were being revoked and asked why the agency did not retain rules and regulations relevant to enforcing the remaining enforceable provisions of the Act. (The agency responded it had determined the provisions of the Act that were suspended until January 1, 2019, effectively rendered the other provisions inoperable.) (Note: SB 261 (2018) extended the suspension of those provisions to January 1, 2020.)
- Emergency Medical Services, variances from requirements in rules and regulations, October 24, 2017. The Committee expressed concern that removing a time limit placed too much discretion with the board and having time parameters for variances helps ensure equitable treatment of applicants for variances. (The agency responded it gets 20-25 requests for variances each year, and most of those have to do with “loaner” ambulances while ambulance engines are repaired. It noted KSA 2017 Supp. 65-6111 limits variances to temporary situations in which “a literal application or enforcement of the rule and regulation would result in serious hardship and the relief granted would not result in any unreasonable risk to the public interest, safety, or welfare.” It also stated its Board would continue to review precedent prior to issuing a variance.)
- Board of Healing Arts, acupuncturists, October 24, 2018. The Committee noted a proposed rule and regulation required an acupuncture practitioner to have obtained a clean needle technique certificate within the previous six years in order to become licensed. The Committee expressed its concern the six-year requirement would require otherwise qualified practitioners to retake a course or pass a test the practitioner had already passed. (The agency stated the issue had been identified after discussions with stakeholders and a review of available materials, and it had received written public comment expressing the same concern. The agency reported the final rule and regulation deleted the phrase “within the previous six years.”)

- Board of Healing Arts, acupuncturists, October 24, 2018. The Committee noted a proposed rule and regulation would allow a licensee to withhold the patient’s record if the licensee reasonably determines information within the record is “detrimental to the mental or physical health of the patient,” language similar to that used in another rule and regulation last amended in 1998. It noted federal regulations issued in 2000 implementing the Health Insurance Portability and Accountability Act (HIPAA) allow a licensed health care professional to deny a request for a patient’s health record using a standard of “reasonably likely to endanger the life or physical safety” of the individual or a similar standard. The Committee asked whether the agency had reviewed the language in light of the HIPAA standard. (The agency reported it concluded the concern was well founded and, following consultation with the Office of the Attorney General and the Department of Administration, amended the rule and regulation.)
- Board of Pharmacy, compounding of drugs, March 5, 2018. The Committee suggested the agency not proceed with a regulation that would have required a pharmacy to shut down under certain circumstances and continue to work with members of the regulated community to find common ground regarding compliance with any state regulations and the standard known as USP 797, Pharmaceutical Compounding of Sterile Preparations, with which testimony indicated pharmacies must comply. (The agency responded several comments had also been received from the public pertaining to the proposed required shutdown of operations due to microbial growth over acceptable levels being inconsistent with U.S. Pharmacopeia 797 sterile compounding standards. The Board amended the rule and regulation to prevent a shutdown and, instead, mirror the exact requirements of USP 797.)

## Legislative Action

Of the 118 bills enacted in 2018, 21 contained provisions authorizing, requiring, moving, or clarifying authority for state agency rules and regulations. The following list summarizes those statutory changes. Statutory deadlines that were specified are mentioned. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2018 *Summary of Legislation*, available from the Kansas Legislative Research Department’s website. A table listing statutes enacted in 2012 through 2018 that required rules and regulations is included at the end of this report.

## All Agencies

**House Sub. for SB 56** creates the Kansas Cybersecurity Act and establishes the Kansas Information Security Office within the Office of Information Technology Services. Among the Office responsibilities are assisting Executive Branch agency development of cybersecurity programs that comply with laws, rules, regulations, and standards set by the Information Technology Executive Council. Executive Branch agencies may pay for cybersecurity services from existing budgets, from grants or other revenues, or through special assessments to offset costs. Any increase in fees or charges due to the Act, including cybersecurity fees charged by KISO, are to be fixed by rules and regulations adopted by the agency and used only for cybersecurity. The bill allows services or transactions with an applied cybersecurity cost recovery fee to indicate the portion of the fee dedicated to cybersecurity on all receipts and transaction records.

**HB 2280** revises the Rules and Regulations Filing Act, in several ways, effective June 7, 2018.

The bill amends the specified content of economic impact statements to require an analysis of effects on business activities and growth, analysis of costs and benefits, measures taken to minimize costs to businesses and economic development, and estimates of total implementation and compliance costs.

The bill requires each proposed rule and regulation be submitted to the Director of the Budget (Director) before it is submitted to the Secretary of Administration and the Attorney General. The Director is to conduct an independent analysis to determine whether the costs incurred by non-state government entities will be \$3.0 million or less over a two-year period. If the costs exceed the threshold, the Director may disapprove the proposed rule and regulation or approve it if the agency conducts an additional public hearing and finds the costs accurate and necessary.

The bill adds a member of the minority party to the membership of the State Rules and Regulations Board.

The bill states a ranking minority member will be designated for the JCARR by the minority leader of the chamber from which the chairperson is selected.

The bill requires a report from the JCARR to the Legislature following each meeting where comments, recommendations, and concerns are expressed.

The bill states the Legislative Post Audit Committee in 2021 will direct the Legislative Division of Post Audit to study the accuracy of economic impact statements submitted by state agencies for the preceding seven years, the impact of the Director's review, and whether the \$3.0 million threshold is the appropriate level to trigger an additional public hearing.

### ***Specified Licensing Agencies***

**Senate Sub. for Senate Sub. for HB 2386** requires any person, board, commission, or similar body (board) that determines the qualifications of individuals for licensure to revise its requirements to list the specific civil and criminal records that could disqualify an applicant from receiving a license, certification, or registration. The revision must occur within 180 days after the effective date of the bill. The provisions do not apply to the Kansas Commission on Peace Officers' Standards and Training, the Kansas Highway Patrol, the Board of Accountancy, the Behavioral Sciences Regulatory Board, the State Board of Healing Arts, the State Board of Pharmacy, the Emergency Medical Services Board, the Board of Nursing, the Kansas Real Estate Commission, the Office of the Attorney General, and the Kansas Insurance Department; to any county, township, city, school district, or other political or taxing subdivision of state or any agency thereof; or to any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree. (The corresponding rules and regulations of the Board of Cosmetology and the State Board of Mortuary Arts were heard at the December 10, 2018, meeting. Corresponding rules and regulations of the Board of Technical Professions were heard at the May 14, 2019, meeting.)

## ***Aging and Disability Services, Department for***

**HB 2232** allows a resident of an adult care home, or a resident's guardian or legal representative, to conduct authorized electronic monitoring (monitoring) in the resident's room subject to requirements set out in the bill. The bill authorizes the Secretary for Aging and Disability Services to adopt rules and regulations necessary to administer these provisions, by January 1, 2019.

Continuing law allows an adult care home to employ persons convicted of certain listed crimes if six or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from supervision. **Senate Sub. for Senate Sub. for HB 2386** clarifies that the sentence must be completed, or the individual be released from supervision, and removes certain crimes from the list of those having a six-year disqualification. The bill also allows any person subject to a six-year prohibition of employment at a facility to apply to the Secretary for a waiver if five or more years have passed since completion of the sentence associated with the disqualifying conviction. The bill requires the Secretary for Aging and Disability Services to adopt rules and regulations establishing the waiver process and criteria to be considered in evaluating any such waiver request. The bill also requires all fees charged by the Secretary for criminal history record checks conducted for these employment purposes to be established in rules and regulations. The bill requires the Department for Aging and Disability Services to require applicants for adult care home or home health agency employment to be fingerprinted and to submit to a state and national criminal history record check, and it directs the agency to adopt rules and regulations establishing dates and procedures for the implementation of criminal history record checks. The Department may implement these amendments to criminal history check requirements in phases for different categories of employers.

## ***Agriculture, Department of***

**SB 263**, the Alternative Crop Research Act (Act), allows the Kansas Department of Agriculture (KDA), either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. The bill allows individuals to participate in the research program under the authority of the KDA. The bill requires the KDA to promulgate rules and regulations by December 31, 2018, to carry out the provisions of the Act. The rules and regulations of the KDA shall include, but not be limited to, a requirement that license holders keep in their possession at all times the license that they are engaged in cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act. Licensing and renewal fees are to be established in rules and regulations. (The corresponding rules and regulations were heard at the January 7, 2019, meeting.)

**HB 2583** creates the Noxious Weed Act (Act) and repeals former noxious weeds law. The bill requires the Secretary of Agriculture (Secretary) to adopt rules and regulations to declare species of plants as noxious weeds in the state. The Secretary may not declare any species of plant to be a noxious weed without the recommendation of the State Noxious Weed Advisory Committee created by the bill unless the Secretary makes a time-limited emergency declaration. Also before adopting such rules and regulations, the Secretary must submit a report to the Legislature discussing the proposed changes to the official list of noxious weeds.

### ***Behavioral Sciences Regulatory Board***

**Senate Sub. for HB 2028** establishes the Kansas Telemedicine Act (Act). The bill authorizes the Behavioral Sciences Regulatory Board to adopt rules and regulations necessary to effectuate provisions of the Act by December 31, 2018.

### ***Children and Families, Department for***

**House Sub. for SB 179** creates and amends law to establish juvenile crisis intervention centers (intervention centers) and procedures for admission of juveniles to such centers. On or before January 1, 2019, the Secretary for Children and Families, in consultation with the Attorney General, must promulgate rules and regulations to implement the law created by the bill.

### ***Corrections, Department of***

**SB 328** requires prior legislative authorization for any state agency to enter into any agreement or take any action to outsource or privatize security operations of any correctional or juvenile correctional facility operated by a state agency. The bill defines “security operations” to include supervision of inmates in a correctional institution or juvenile correctional facility by a corrections officer or warden. The bill authorizes the Secretary of Corrections to adopt rules and regulations to identify job classifications and duties to be considered part of security operations.

### ***Education, State Board of***

**Sub. for SB 423**, which appropriates moneys for and makes program changes related to state funding of public K-12 education, removes a requirement the State Board of Education adopt rules and regulations that establish the criteria for eligibility for at-risk program services.

### ***Healing Arts, State Board of***

**Senate Sub. for HB 2028** establishes the Kansas Telemedicine Act (Act). The bill requires the Board of Healing Arts (BOHA), following consultation with the State Board of Pharmacy and the Board of Nursing, to adopt rules and regulations by December 31, 2018, relating to the prescribing of drugs, including controlled substances, via telemedicine. It also authorizes the BOHA to adopt rules and regulations necessary to effectuate provisions of the Act by December 31, 2018. (The corresponding rules and regulations were heard at the January 7, 2019, meeting.)

### ***Health and Environment, Department of***

**Senate Sub. for HB 2028** establishes the Kansas Telemedicine Act (Act). The bill also provides for coverage of speech-language pathologist and audiologist services via telehealth under the Kansas Medical Assistance Program (KMAP), if such services are covered under KMAP when delivered via in-person contact. The bill authorizes the Department of Health and Environment to adopt rules and regulations necessary to implement the speech-language pathologist and audiologist service provisions; such rules and regulations are to be adopted on or before December 31, 2018.

**HB 2577** requires all fees collected by the Right-to-Know Program (Program) within the Kansas Department of Health and Environment to be deposited into the State Treasury and credited to the Kansas Right-to-Know Fee Fund, which is created by the bill. Before this bill, these fees were deposited in the State General Fund. The bill establishes maximum fees for the Program. It authorizes the Secretary of Health and Environment to increase fees in rules and regulations as necessary, not exceeding the set maximums, to provide sufficient revenues to administer the Program and directs the Secretary to reduce fees when the fees yield more revenue than necessary to administer the Program.

**HB 2639** requires local and state law enforcement officers and agencies to assist the Secretary of Health and Environment (Secretary) in taking and processing fingerprints of persons residing, working, or regularly volunteering in a child care facility and to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the Kansas Department of Health and Environment (KDHE). The Secretary is required to adopt rules and regulations, by January 1, 2019, to fix a fee for fingerprinting such persons as required to reimburse KDHE for the cost of fingerprinting. (The corresponding rules and regulations were heard at the October 3, 2018, meeting.)

### ***Insurance, Department of***

**SB 410** creates the Captive Insurance Act (Act) under the Insurance Code by amending law and creating law related to captive insurance companies. The bill creates two new captive insurance types—branch captive insurance company and special purpose insurance captive—and specifies the regulatory structure for each. [*Note: A captive is an insurance company created and wholly owned by one or more non-insurance companies to insure the risks of its owner (or owners).*] The bill authorizes the Commissioner of Insurance (Commissioner) to adopt rules and regulations establishing standards to ensure a pure captive insurance company's parent or any of its affiliated companies is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company, except that, until rules and regulations are adopted, the Commissioner may approve the coverage of such risks by a pure captive insurance company on a case-by-case basis. Through rules and regulations, the Commissioner is required to designate material changes in financial condition of captive insurance companies that must be reported and to prescribe forms by which captive insurance companies shall report. The Commissioner, on a case-by-case basis, by order, may exempt a captive insurance company from the provisions of the Act and any rule and regulation. The bill also states the Commissioner may promulgate rules and regulations necessary to effectuate new provisions related to special purpose insurance captives and specifically requires the Commissioner to establish, by rules and regulations or order, the form and content of an annual report to be filed by a special purpose insurance captive. It authorizes the Commissioner to exempt all, or any one, special insurance captive by rules and regulations or order from requirements in the bill. The bill also authorizes rules and regulations regarding dormant captive insurance companies.

### ***Investigation, Kansas Bureau of***

**HB 2459** creates and amends law related to civil asset forfeiture. It requires the Kansas Bureau of Investigation (KBI) to establish the Kansas Asset Seizure and Forfeiture Repository and, on and after July 1, 2019, to maintain the repository and an associated public website. The bill requires the KBI to promulgate rules and regulations to implement the repository provisions by July 1, 2019. (The corresponding rules and regulations were heard at the May 14, 2019, meeting.)

### ***Labor, Department of***

**House Sub. for SB 307 and SB 310**, identical in this respect, require the rules and regulations adopted by the Secretary of Labor implementing the Kansas Amusement Ride Act to require inspector education, experience, and training at least equivalent to that required for a Level I certification from the National Association of Amusement Ride Safety Officials, rather than for a Level II certification as in previous law.

### ***Regents, Board of***

**HB 2579** creates and amends law regarding compensation for wrongful conviction and imprisonment. In addition to monetary damages, the bill allows the court to award non-monetary relief and states claimants are entitled to receive benefits including a waiver of tuition and fees to attend a postsecondary educational institution for up to 130 credit hours. The bill requires the Board of Regents to adopt rules and regulations to administer the tuition assistance.

### ***Revenue, Department of***

**Sub. for HB 2147** creates a process by which certain Native American military veterans may apply for a refund of state personal income taxes improperly withheld from such veteran's federal military income in the amount of income taxes paid plus interest. The bill authorizes the Secretary of Revenue to adopt rules and regulations necessary to administer the provisions of the bill.

**HB 2470** allows licensed public venues, clubs, and drinking establishments to provide self-service beer to customers from automated devices in the same manner as is permitted for wine under continuing law, so long as the licensee monitors the dispensing of beer and can control such dispensing. The bill requires the Secretary of Revenue to adopt rules and regulations to implement the provisions of the bill by January 1, 2019.

**HB 2606** amends law related to online driver's license renewal. It waives a requirement in continuing law that a driver's license examiner administer an eyesight examination prior to renewal of a driver's license if the renewal applicant is between ages 21 and 50, has undergone an examination by an ophthalmologist or optometrist within the previous year, and meets additional requirements. It requires, rather than authorizes as in former law, the Secretary of Revenue to adopt and administer rules and regulations regarding electronic online renewal of a driver's license and specifies those rules and regulations must include, but not be limited to, requirements that an electronic online renewal applicant has previously provided documentation of identity, lawful presence, and residence to the Division of Vehicles for electronic scanning.

### ***Secretary of State***

**HB 2539** creates law requiring manual audits of elections occurring after January 1, 2019. The bill requires the Secretary of State to adopt rules and regulations governing the conduct and procedure of election audits, including the random selection of precincts and offices involved in audits. (Temporary corresponding rules and regulations became effective June 26, 2019.)

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2016 through June 2017**

From July 2016 through June 2017, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 29 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met nine times. Meeting dates, the state agencies appearing before the Committee, and the main topics of the proposed rules and regulations are included in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2016 - June 2017</b>							
<b>Agency</b>	<b>Sept. 6, 2016</b>	<b>Nov. 16, 2016</b>	<b>Jan. 3, 2017</b>	<b>March 6 &amp; 7, 2017</b>	<b>April 5, 2017</b>	<b>May 16 &amp; 31, 2017</b>	<b>June 26, 2017</b>
<b>Administration</b>	Leave, reviews, layoffs						
<b>Administrative Hearings</b>		Hearing procedures					
<b>Agriculture – Animal Health</b>			Cervid brucellosis	Pet Animal Act* (later withdrawn)			Pet Animal Act*; auctions*
<b>Agriculture - Veterinary Examiners</b>			Fees				
<b>Agriculture – Water Resources</b>	Well spacing, water meters				Civil penalties		Uses of water*
<b>Athletic Commission</b>			Mixed martial arts				
<b>Attorney General</b>	Scrap metal dealers; bail agents	School officer training; court debt collection					
<b>Barbering</b>	Licensing; training						
<b>Behavioral Sciences</b>	Applied behavior analysis					Supervisor education*	
<b>Children and Families</b>							Foster care licensing*
<b>Corporation Commission</b>			Renewable energy				
<b>Corrections</b>	Fighting						
<b>Corrections (Juvenile)</b>				Community-based gradual responses			

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2016 - June 2017**

<b>Agency</b>	<b>Sept. 6, 2016</b>	<b>Nov. 16, 2016</b>	<b>Jan. 3, 2017</b>	<b>March 6 &amp; 7, 2017</b>	<b>April 5, 2017</b>	<b>May 16 &amp; 31, 2017</b>	<b>June 26, 2017</b>
<b>Cosmetology</b>	License fees; access to tanning devices						
<b>Education</b>	Suicide prevention				Emergency safety interventions; teacher preparation; school bus transportation		
<b>Emergency Medical Services</b>				Scope of practice	Ambulance equipment*		
<b>Examiners in Fitting and Dispensing of Hearing Instruments</b>		Examinations, fees					
<b>Healing Arts</b>			Dry needling				
<b>Health and Environment (KDHE)</b>	Air quality	Day care homes and centers				Trauma centers*; voluntary cleanup of contamination*	
<b>Indigents' Defense</b>	Attorney compensation						
<b>Insurance</b>				External review; reporting*; risk-based capital instructions*		Workers compensation exemption affidavit*	Medicare supplement policies*
<b>Labor (Workers Compensation)</b>		Fees for medical services					
<b>Nursing</b>				Fees for verification of license			
<b>Pharmacy</b>							Emergency opioid antagonist protocols*
<b>Real Estate Appraisal</b>				Coursework, experience, supervision			
<b>Real Estate Commission</b>	Clarify relationships	Fees			Rebates		
<b>Regents</b>	State university admissions			Military admissions; GED scores; private and out-of-state institutions			

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2016 - June 2017**

<b>Agency</b>	<b>Sept. 6, 2016</b>	<b>Nov. 16, 2016</b>	<b>Jan. 3, 2017</b>	<b>March 6 &amp; 7, 2017</b>	<b>April 5, 2017</b>	<b>May 16 &amp; 31, 2017</b>	<b>June 26, 2017</b>
<b>Revenue</b>			Consumable materials tax (electronic cigarettes)				
<b>Wildlife, Parks and Tourism</b>	Vehicle permits; bait fish; wild turkey hunting			Possession of game; big-game seasons; public lands special use restrictions		Nuisance birds; deer hunting*	

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2017.  
 (1) Includes a May 12, 2016, meeting at which only Emergency Medical Services proposed rules and regulations were heard.  
 (2) Three of the four proposed rules and regulations were withdrawn.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

Examples of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### **Authority**

- Department of Insurance, workers compensation insurance policies, May 16, 2017. The Committee heard testimony regarding authority for this particular rule and regulation; Committee leadership and staff met with a representative of the Attorney General's Office to discuss the issue. (In its response, the agency stated the Attorney General's Office had reviewed and approved the proposed rule and regulation for legality and outlined statutes granting authority and interpreted with the rule and regulation.)

### **Clarity**

- Behavioral Sciences Regulatory Board, behavioral analysts, September 6, 2016. The Committee requested clarification on whether an assistant behavioral analyst may be supervised by someone in a profession other than behavioral analysis. (The agency responded the scope of practice for an assistant behavior analyst is very narrow and only a licensed behavior analyst could supervise an assistant behavior analyst.)
- Department of Health and Environment, voluntary cleanup and property redevelopment program, May 31, 2017. The Committee suggested clarification to ensure qualified persons conduct the required analyses. It also suggested the agency clarify whether the Secretary's designee could approve an application. (The agency responded the term "qualified environmental professional" was replaced with "an individual who possesses the education, experience, or licensure sufficient to prepare a competent environmental site assessment." It also stated the Secretary's designee may approve an application.)
- Department of Agriculture, Division of Animal Health, Kansas Pet Animal Act, June 26, 2017. Committee members were concerned about definitions, *e.g.*, for "rescue network," used in the proposed rules and regulations but did not exist in the statutes, and the potential effect on the regulated community. It noted SB 47, to amend the Kansas Pet Animal Act, was not passed by the Legislature in 2017. (The agency responded two license categories were created as categories of animal shelters as that term is defined in statute.)

## ***Changes to Law***

- Behavioral Sciences Regulatory Board, behavioral analysts, September 6, 2016. The Committee suggested the agency consider requesting a change to law to add a behavioral analyst to the Behavioral Sciences Regulatory Board. (The agency said it determined input from behavior analysts and assistant behavior analysts could be accomplished by adding a representative of behavior analysts to the Board's psychology advisory committee, which would not require a change to law.)

## ***Compliments***

- Real Estate Commission, family and brokerage relationships, September 6, 2016. The Committee commended the agency for its work on this set of rules and regulations.
- Board of Barbering, permits, course requirements, licensing, September 6, 2016. The Committee commended the agency's administrator for doing a superb job during a difficult time for the agency.
- Office of Administrative Hearings, hearing procedures, November 16, 2016. The Committee commended the agency for the revised rules and regulations on electronic filing.
- Board of Pharmacy, emergency opioid antagonist protocols, June 26, 2017. The Committee commended the agency for its timely and appropriate development and implementation of this rule and regulation.

## ***Fees and Costs***

- Attorney General, bail enforcement agent licensing, September 6, 2016. The Committee requested information on the projected adequacy of the fees and a report in six months as to the adequacy of the fees to cover costs to oversee the program. (In its September 28, 2016, response, the agency said it was too early to determine whether the fees would cover the costs to the agency to oversee the program. Later information showed direct costs of approximately \$230 per license for salaries and fringe benefits for time spent specifically on those applications and application fees of \$257 per license, including the cost of a criminal record check. Total revenue to the program as of July 2017 was \$5,397, with 21 applications received (of which 20 were approved). The response noted indirect costs would include information technology, human resources, fiscal, and administrative support costs and that total costs would exceed amounts received from applications.)
- Department of Labor, Division of Workers Compensation, fees for medical services, November 16, 2016. The Committee recommended the agency explore, with the National Council on Compensation Insurance, whether a shift to using actual acquisition cost or another cost methodology would be beneficial for future schedules of medical fees. (The agency responded its representative had discussed this with the National Council on Compensation Insurance and no state was then using acquisition costs as its base for workers compensation reimbursement for

prescription drugs. It added the issue may be reviewed again when creating the 2019 medical fee schedule.)

- Attorney General, school for law enforcement officer training, November 16, 2016. The Committee expressed concern this set of rules and regulations is an unfunded mandate to law enforcement agencies and unified school districts. (The agency replied 2016 SB 14, Section 14, requires the agency to collaborate with the Kansas Law Enforcement Training Center and the State Board of Education to promulgate rules and regulations on this topic.)
- Department of Health and Environment, child care provider training, March 6, 2017. The Committee expressed its concern with costs to child care providers to meet the new training requirements and requested the amount associated with the Child Care and Development Fund (CCDF) State Plan. (The agency responded total funds available for the CCDF State Plan are approximately \$51 million a year and the potential penalty for not being in compliance with the federal Child Care Development Block Grant Act of 2014 was approximately \$1 million a year.)

### ***Information Requests***

- Attorney General, bail enforcement agent licensing, September 6, 2016. The Committee asked about procedures for bail enforcement agents who may not be from Kansas. (The agency responded a Kansas license is not required, and notes one option is for the out-of-state bail enforcement agent to contract with a Kansas entity. It notes the Bail Enforcement Agent Licensing Act contains no authority for the Office of the Attorney General to establish reciprocity agreements with other states.)
- Department of Administration, awarding of administrative leave, September 6, 2016. The Committee requested information on the potential impact of the rules and regulations on state employees and their Kansas Public Employees Retirement System (KPERs) benefits. (The agency said it anticipated a positive impact on employee morale and that guidelines to be issued in the form of a Personnel Bulletin would address how to eliminate or minimize adverse effects on employees who receive administrative leave of ten days or more [and therefore are not eligible for KPERs service credit for that time] or who could lose vacation leave as a result of using administrative leave.)
- Department of Health and Environment, voluntary cleanup and property redevelopment program, May 31, 2017. The Committee requested an example of the type of information filed to notify a prospective landowner of approved controls for the property subject to a voluntary agreement on this topic. (The agency provided an example of an environmental use control agreement.)
- Department of Agriculture, Division of Animal Health, Kansas Pet Animal Act, June 26, 2017. The Committee requested information on the agency's position and rationale used to choose entities with respect to unannounced inspection, and it also requested the agency describe its requests to the Legislature for additional resources to fund additional inspectors for this program. (The agency responded legislation had been introduced in 2016 to increase fees, and it described its efforts to "stretch" funding to cover annual costs. Those efforts had included reducing the

number of inspectors. It described the process by which it determined a risk category for each facility and stated only those facilities with histories of the best inspection ratings are not subject to unannounced inspection.)

### ***Program Concerns***

- Department of Administration, appeal of performance rating and shared leave program, September 6, 2016. The Committee noted a proposed rule and regulation on appeal of a performance rating appeared to deviate from the recommendations of the Hays Study and requested information on the impact on State employees. It also requested a complete explanation of the shared leave program and its use over time and asked for clarification on certain aspects of that program. (The Department responded it had decided not to proceed with the proposed amendments to either KAR 1-7-11 or KAR 1-9-23 and did not need to address the “moot” comments and requests.)
- Department of Education, suicide prevention training, September 6, 2016. The Committee requested the agency consider requiring a form of verification to ensure self-review of suicide prevention training actually occurred and to clarify the meaning of “all school staff.” (The Department responded the schools are held accountable through the accreditation system and the agency would be revising all accreditation regulations [including on suicide prevention training] and could add a definition of “all school staff” after that review if needed.)
- Department of Revenue, tax on consumable materials (electronic cigarettes), January 3, 2017. The Committee expressed its disappointment that the rules and regulations would not go into effect until after the tax implementation date of January 1, 2017. (The agency responded it worked closely with the e-cigarette industry, and continued conversations with industry representatives resulted in a compromise in enacted 2017 Sub. for HB 2230. The bill defines “consumable material” and delayed implementation of the law until July 1, 2017.)
- Department of Insurance, external review of medical condition decisions, March 6, 2017. The Committee expressed concern that the amount of time outlined in the rule and regulation for an expedited external review (3 business days) is inconsistent with that in statute (72 hours from receipt), and it requested the agency review this and the use of both “days” and “business days” in the proposed rule and regulation. (The rule and regulation had not been published as final as of August 2018, and no response had been received.)
- Board of Regents, GED scores, March 6, 2017. The Committee asked how the agency would deal with individuals who were granted GED credentials with scores of 145-149 before the rule and regulation was amended from requiring a score of 150 to requiring a score of 145. (The agency responded it amended the rule and regulation, after consultation with staff of the Offices of the Attorney General and the Secretary of State, to make the amended score effective for all tests taken on or after January 1, 2014. It estimated approximately 650 Kansans took the test during the time in question and approximately 164 scored between 145 and 149 on at least one of the tests.)

- Department of Agriculture, Division of Water Resources, changes to beneficial uses of water, June 26, 2017. The Committee noted the discretion in the proposed rule and regulation as to the amount of a civil penalty and asked how the agency ensures a penalty amount is determined in an objective rather than a subjective manner. (The agency responded it uses internal policies to ensure penalties are applied fairly and described the policy, which bases the penalty on the time elapsed since the water use report was due.)

## **Legislative Action**

Of the 104 bills enacted in 2017, 26 contained provisions authorizing, requiring, moving, or clarifying authority for rules and regulations. The following list summarizes those statutory changes. Statutory deadlines that were specified are mentioned. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2017 *Summary of Legislation*, available from the Kansas Legislative Research Department's website.

### ***Agriculture, Department of***

**House Sub. for SB 60** requires, rather than allows, the Secretary of Agriculture to reduce the fee for registrations of agricultural chemicals and commercial fertilizers and for any dairy license or inspection fee whenever it is determined the fee is yielding more revenue than is necessary for the administration of the program to which it is linked.

**HB 2136** authorizes the Secretary of Agriculture to promulgate rules and regulations requiring technical representatives of service companies that work with motor fuel dispensing devices in violation of dispensing device statutes or rules and regulations to seek renewal of a license on an annual basis, as well as to establish criteria for reinstatement of eligibility for the three-year license. It also authorizes the Secretary of Agriculture to charge a fee, in an amount not more than is necessary to cover the expenses incurred by the agency, to the attendees of continuing education seminars for technical representatives.

### ***Attorney General***

**SB 23** requires the Attorney General, the Commissioner of Insurance, and the Securities Commissioner to coordinate and cooperate to prevent, detect, investigate, and criminally prosecute crimes related to insurance and securities. The Attorney General is authorized to adopt rules and regulations to administer that section of new law.

**House Sub. for SB 40** requires any applicant for issuance or renewal of a commercial driver's license to have completed training approved by the Attorney General in human trafficking identification and prevention. The Attorney General, in consultation with the Director of Vehicles, is directed to promulgate rules and regulations to implement these provisions, by January 1, 2019. (The corresponding rules and regulations were heard at the January 3, 2018, meeting.)

**SB 149** allows the Attorney General to determine, establish, and collect legal representation charges for legal services provided to any state agency (defined by the bill to mean any department of state government, or any agency thereof, that collects fees for licensing, regulating, or certifying a person or profession). The Attorney General may determine the charges to any agency based on a schedule of fees and costs published by the Attorney General or by agreement with the state agency; those fees may not exceed the limits established for compensation and reimbursement for legal services provided to indigent

defendants. The Attorney General is authorized to adopt rules and regulations as necessary to implement the provisions.

### ***Children and Families, Department for***

**Sub. for Sub. for SB 95** requires the Secretary for Children and Families to accept a telephonic signature by an applicant or an applicant's authorized representative to fulfill any signature requirement for application for public assistance programs administered by the Secretary. The bill makes a telephonic signature an option for applicants, not a requirement. The bill requires the Secretary, prior to January 1, 2018, to adopt rules and regulations to establish requirements and procedures for submitting a telephonic signature, including measures to verify the identity of any applicant choosing or purporting to submit a telephonic signature; to protect an applicant for public assistance against potential impersonation, identity theft, or invasion of privacy; and to provide accurate linkage between a telephonic signature and the associated application or case file. (The corresponding rules and regulations were heard at the December 10, 2018, meeting.)

### ***Citizens Utility Ratepayer Board***

**Executive Order 11-02** ordered the Citizens Utility Ratepayer Board (CURB) to receive proposed rules and regulations and, at CURB's discretion, to review those proposed rules and regulations for their impact on Kansas citizens and provide comments to the Office of the Governor. The order requires executive agencies to send copies of proposed rules and regulations to CURB after getting approval from the Department of Administration and the Attorney General's Office on those proposed rules and regulations. However, **Senate Sub. for HB 2002, Sec. 62**, prohibits CURB from using state funding in the Utility Regulatory Fee Fund for any duties pursuant to Executive Order No. 11-02 in state fiscal year 2018.

### ***Corrections, Department of***

**House Sub. for SB 42** requires the Department of Corrections to establish and maintain a statewide searchable database that contains information regarding juveniles who participate in an immediate intervention program. The bill requires county and district attorneys, judges, community supervision officers, and juvenile intake and assessment workers to have access to the database and to submit necessary data to such database. The bill requires the Department of Corrections, in consultation with the Office of Judicial Administration, to adopt rules and regulations to carry out these provisions.

### ***Education, State Board of***

**SB 19** authorizes the State Board of Education to adopt rules and regulations to administer the Kansas School Equity and Enhancement Act. It also specifically authorizes the Board to adopt rules and regulations prescribing procedures for school districts to follow in reporting information related to student transportation, including on uniform reporting of expenditures for transportation, and establishing the criteria for eligibility for at-risk program services in districts that offer instruction in kindergarten and in grades 1 through 12. (The last requirement was repealed in 2018 Sub. for SB 423.) [Note: The provisions are nearly identical to those of KSA 72-6437 before its repeal in 2015.]

### ***Fusion Center Oversight Board***

**SB 184**, the Kansas Intelligence Fusion Center Act, establishes the Fusion Center Oversight Board, which is composed of the Attorney General, the Adjutant General, and a member appointed by the Attorney General with expertise in critical infrastructure protection. The bill authorizes the Board to adopt rules and regulations necessary to carry out the provisions of the Act.

### ***Insurance, Department of***

**SB 14** requires the Commissioner of Insurance to adopt, by January 1, 2018, rules and regulations relating to insurance for self-service storage units.

**SB 16** authorizes the Commissioner to adopt rules and regulations on three topics:

- The bill authorizes the Commissioner to act as the group-wide supervisor for any internationally active insurance group and to promulgate, by July 1, 2018, rules and regulations necessary to administer these provisions;
- The bill's provisions regarding corporate governance annual disclosure include authority for the Commissioner to adopt, by January 1, 2019, rules and regulations necessary to administer these provisions; and
- The bill specifies the requirements for reinsurance credit on and after January 1, 2018. The bill authorizes the Commissioner to adopt, by January 1, 2019, rules and regulations necessary to implement these provisions.

**SB 17**, the Fair Access to Insurance Requirements Plan Act, states its purpose is to make available basic property and casualty insurance to persons who have property interests in Kansas and are in good faith entitled, but unable, to obtain coverage through the voluntary market. The bill authorizes the Commissioner to adopt, by January 1, 2018, rules and regulations necessary to administer the Act.

**SB 23** establishes the Office of the Securities Commissioner as a division under the jurisdiction of the Commissioner of Insurance. The bill requires the Office of the Securities Commissioner to cooperate with the Department of Insurance to consolidate administrative functions and cross-appoint employees as necessary. The Commissioner of Insurance and the Securities Commissioner are authorized to enter into agreements and adopt rules and regulations necessary to administer these provisions.

### ***Health and Environment, Department of***

**Senate Sub. for HB 2026** requires adoption of two sets of rules and regulations:

- By January 1, 2018, the Secretary of Health and Environment must adopt rules and regulations necessary to implement requirements related to Medicaid managed care organizations, regarding data production and training, standardization, the provision of an independent auditor, payment to nursing facilities with a change in ownership, and non-discrimination against a licensed pharmacy or pharmacist; and
- By January 1, 2020, the Department must adopt rules and regulations to implement provisions related to Medicaid external independent third-party review.

### ***Labor, Department of***

**House Sub. for SB 86** requires the Secretary of Labor, by January 1, 2018, to adopt rules and regulations to implement amendments the bill makes to the Kansas Amusement Ride Act and the Amusement Ride Insurance Act. It also requires the Secretary of Labor to adopt rules and regulations specifying nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides and requiring education, experience, and training at least equivalent to that required for a Level II certification from the National Association of Amusement Ride Safety Officials as of July 1, 2017. **House Sub. for SB 70**, which was repealed and replaced by House Sub. for SB 86, contained an identical provision regarding rules and regulations related to inspector certification. (The corresponding rules and regulations were heard at the August 2, 2017, meeting.)

### ***Nursing, Board of***

**HB 2118** requires the Board of Nursing to adopt in rules and regulations continuing education requirements for inactive advanced practice nursing licensees to become licensed in the state.

### ***Pharmacy, Board of***

**Senate Sub. for HB 2055** requires the Board of Pharmacy to establish standards and requirements for the issuance and maintenance of registration for third-party logistics providers and for outsourcing facilities engaged in the compounding of sterile drugs. Those rules and regulations must address, among other topics, that the personnel employed by persons registered to operate as third-party logistics providers or outsourcing facilities have appropriate education and experience to assume responsibility for compliance with state registration requirements. The bill also requires the Board to adopt rules and regulations to restrict the tasks a pharmacy technician may perform prior to passing any required examinations and to govern proper compounding practices and distribution of compounded drugs by pharmacists and pharmacies. (Rules and regulations regarding third-party logistics provider registration fees were heard at the October 24, 2017, meeting. Rules and regulations regarding pharmacy technicians and compounding of drugs were heard March 5, 2018.)

**HB 2217** creates standards governing the use and administration of emergency opioid antagonists to inhibit the effects of opioids and for the treatment of an opioid overdose. It requires the Board of Pharmacy to issue a statewide opioid antagonist protocol, define applicable terms, establish educational requirements for the use of opioid antagonists, and provide protection from civil and criminal liability for individuals acting in good faith and with reasonable care in administering an opioid antagonist. The bill requires the Board to adopt rules and regulations necessary to implement the provisions of the bill prior to January 1, 2018. (The corresponding rules and regulations were heard at the June 26, 2017, meeting.)

### ***Revenue, Department of***

**House Sub. for SB 13** allows businesses with licenses to sell any cereal malt beverage (defined by law to mean any fermented but undistilled liquor brewed from malt, malt substitute, flavored malt beverage, or combination thereof, with an alcohol weight of 3.2 percent or less) to sell beer containing not more than 6.0 percent alcohol by volume, starting April 1, 2019. The bill authorizes the Director of Alcoholic Beverage Control to adopt rules and regulations necessary to administer the provisions of the bill. The bill states the rules and regulations are to be

promulgated by July 1, 2018. (The corresponding rules and regulations were heard at the April 24, 2018, meeting.)

**Sub. for SB 74**, Joey's Law, authorizes issuance of placards, for use in vehicles, to persons who need assistance with cognition including, but not limited to, persons with autism spectrum disorder. It also authorizes identification of such persons by decals on license plates and on driver's licenses or nondriver identification cards. The bill authorizes the Secretary of Revenue to adopt rules and regulations necessary to implement these provisions.

**Sub. for HB 2230** specifies the Department of Revenue must require in rules and regulations information required of each retail dealer that sells cigarettes to Kansas consumers without *indicia* of Kansas tax. It also delays the effective date, from January 1 to July 1, 2017, for provisions regarding taxing of consumable materials (e-cigarettes).

**Sub. for HB 2277** allows a city or county to establish one or more common areas for the consumption of alcohol within the city or unincorporated area of the county. The bill requires the Secretary of Revenue to adopt rules and regulations to implement these provisions.

### ***Securities Commissioner, Office of the***

**SB 23** establishes the Office of the Securities Commissioner as a division under the jurisdiction of the Commissioner of Insurance. The bill requires the Office of the Securities Commissioner to cooperate with the Department of Insurance to consolidate administrative functions and cross-appoint employees as necessary. The Commissioner of Insurance and the Securities Commissioner are authorized to enter into agreements and adopt rules and regulations necessary to administer these provisions.

### ***State, Secretary of***

**HB 2158** requires advance voting ballots postmarked (or otherwise indicated by the U.S. Postal Service to have been mailed) before the close of the polls on election day to be counted if received on or before the third day following the election, unless additional time is permitted by the Secretary of State. The bill requires the Secretary of State to adopt rules and regulations to implement these provisions.

### ***State Bank Commissioner***

**SB 20** replaces a provision setting the application fee for a credit services organization business at \$100 with one stating the amount of the fee is to be established by the State Bank Commissioner through rules and regulations.

### ***Tax Appeals, State Board of***

**SB 19** authorizes certain school districts to levy an *ad valorem* tax for not more than two years to finance costs attributable to assignment of ancillary school facilities weighting to the enrollment of the school district. The State Board of Tax Appeals is authorized to adopt rules and regulations to implement these provisions, including rules and regulations relating to the evidence required in support of a school district's claim that the costs attributable to commencing operation of one or more new school facilities exceed the amount that is financed from any other sources provided by law for such purpose. [Note: The requirement is identical to that of KSA 72-6441a before its repeal in 2015.]

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2015 through June 2016**

From July 2015 through June 2016, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 36 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met nine times. Meeting dates, the state agencies appearing before the Committee, and the main topics of the proposed rules and regulations are included in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2015 - June 2016</b>								
<b>Agency</b>	<b>August 10, 2015</b>	<b>Sept. 28, 2015</b>	<b>Nov. 16, 2015</b>	<b>Jan. 7, 2016</b>	<b>Feb. 8, 2016</b>	<b>March 14, 2016</b>	<b>March 22, 2016</b>	<b>June 1, 2016 (1)</b>
<b>911 Coordinating Council</b>	Fees							
<b>Accountancy</b>			Professional conduct					
<b>Administration</b>	Parking garage fees		Travel reimbursement					
<b>Administrative Hearings</b>		Hearings procedures*						
<b>Agricultural Remediation</b>							Reimbursement	
<b>Agriculture</b>					Liming materials			
<b>Agriculture – Animal Health</b>					Euthanasia		Quarantine	Reportable diseases*
<b>Agriculture - Veterinary Examiners</b>							Fees	
<b>Agriculture – Water Resources</b>			Water storage			Flowmeters; closing aquifers		
<b>Attorney General</b>		Scrap metal dealers						
<b>Barbering</b>					Barber colleges; fees			
<b>Children and Families</b>			Child support					
<b>Corporation Commission</b>	Gas wells			Motor carriers				
<b>Corrections</b>		Sexual abuse						

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2015 - June 2016**

<b>Agency</b>	<b>August 10, 2015</b>	<b>Sept. 28, 2015</b>	<b>Nov. 16, 2015</b>	<b>Jan. 7, 2016</b>	<b>Feb. 8, 2016</b>	<b>March 14, 2016</b>	<b>March 22, 2016</b>	<b>June 1, 2016 (1)</b>
<b>Cosmetology</b>	Fees; mobile facilities							
<b>Dental Board</b>			Notification of scaling					
<b>Education</b>						Emergency safety interventions		
<b>Emergency Medical Services</b>			Continuing education	Ambulance definitions			Continuing education*	Continuing education (1)*
<b>Healing Arts</b>				Physician assistants	Continuing education, occupational and physical therapists			
<b>Health and Environment (KDHE)</b>	Nitrogen oxides allocations (air quality)					Contamination risk management	Vital statistics records	
<b>KDHE – Health Care Finance</b>			Adult care home reimbursement					
<b>Indigents' Defense</b>		Attorney compensation						
<b>Insurance</b>		Life insurance; annuities				Benefits coordination		Health utilization management*
<b>Nursing</b>				Programs; licenses; conduct; continuing education				
<b>Pharmacy</b>							Collaborative drug therapy	Continuing ed.; long-term care facilities; automated systems; fees*
<b>Racing and Gaming</b>					Extending certain licenses (2)			
<b>Real Estate Appraisal</b>				Historic properties			License requirements	
<b>Real Estate Commission</b>		License fees; background checks						
<b>Regents</b>	Military in-state tuition; residency							

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2015 - June 2016**

<b>Agency</b>	<b>August 10, 2015</b>	<b>Sept. 28, 2015</b>	<b>Nov. 16, 2015</b>	<b>Jan. 7, 2016</b>	<b>Feb. 8, 2016</b>	<b>March 14, 2016</b>	<b>March 22, 2016</b>	<b>June 1, 2016 (1)</b>
<b>Revenue</b>	Ignition interlock devices		Ignition interlock devices; charitable gaming	Bingo				
<b>Revenue – Alcoholic Beverage Control</b>	Automated wine dispensing							
<b>Revenue – Property Valuation</b>						Mass appraisal continuing education		
<b>Secretary of State</b>	Voter registration							
<b>Securities</b>	Fees	Licensing; registration; ethics						
<b>Technical Professions</b>							Seals and signatures	
<b>Wildlife, Parks and Tourism</b>	License fees; permit applications; fishing				Public lands use; elk and deer hunting		Hunting, doves and antelope	Hunting, deer; remove commercial guiding permits*

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2016.

(1) Includes a May 12, 2016, meeting at which only Emergency Medical Services proposed rules and regulations were heard.

(2) Three of the four proposed rules and regulations were withdrawn.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

**Examples** of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### **Authority**

- Education, emergency safety interventions, March 14, 2016. The Committee suggested the agency cite not only its authority under the *Kansas Constitution*, but also that given through statute for these rules and regulations. (The agency responded it had received no guidance through the Department of Administration or Secretary of State advising state agencies to use the history section of a regulation to make the public aware of a statutory mandate. It further stated it would have adopted the regulations even if the Freedom from Unsafe Restraint and Seclusion Act had not been enacted and noted that Act sunsets in 2020.)

### **Clarity**

- Division of Water Resources, Department of Agriculture, groundwater storage, November 16, 2015. The Committee suggested new language concerning well spacings near the North Fork of the Ninnescah River be separated from continuing language so the new requirement is not confused with language regarding McPherson County. (The agency separated the new and continuing language using subparagraph designations.)
- Revenue, charitable gaming, November 16, 2015. The Committee suggested the agency include "raffle" in the title of a proposed rule and regulation, presented only as "Definitions" and in the same article as bingo rules and regulations. (The agency changed the title to "Charitable raffles; definitions.")

### **Compliments**

- 911 Coordinating Council, fees, August 10, 2015. The Committee said it appreciates the Council looking ahead to future technological advancements for 911 services.
- Revenue, charitable gaming, November 16, 2015. The Committee thanked those responsible for providing a word-for-word comparison between the former rules and regulations for bingo, which were all revoked, and the proposed rules and regulations, many of which were substantially the same as the revoked rules and regulations.

- Emergency Medical Services, ambulance definitions, January 7, 2016. The Committee thanked the Board for simplifying ambulance types and its efforts to enable ambulance coverage throughout the state.
- Barbering, barber colleges, fees, February 8, 2016. The Committee commended the Board for acting to align its practices and rules and regulations and its efforts to further update its rules and regulations.
- Technical Professions, seals and signatures, March 22, 2016. The Committee commended the agency and the Board of Technical Professions for the recognition given to those new to the professions and the efforts to impress on the new professionals the importance of the public trust.

### ***Fees and Costs***

- Wildlife, Parks and Tourism, license fees, August 10, 2015. The Committee said it believed the proposed fee increases were excessive and would discourage hunting and fishing in Kansas. (The agency response stated the majority of the license fees had not been increased since 2002, and some not since 1984, while costs to provide services increased; the increased license fees remained competitively priced compared with those in surrounding states; applications for nonresident deer permits in the first six months following the increase indicated no change in demand; the five-year license option kept the fee on an annual basis at the former rate; and fees were not increased for resident youth deer and turkey permits, to encourage participation.)
- Attorney General, scrap metal dealers, September 28, 2015. The Committee expressed its concern that the cost of initial registration and annual renewal of a scrap metal dealer's registration certificate is excessive and that the fee is the same for all dealers, without differentiating dealer size or between urban and rural dealers. (The agency responded the scrap metal dealer registration program is intended to be self-sustaining and the fee could be adjusted once the agency is able to determine the actual costs of operating the registration program. It noted the Scrap Metal Theft Reduction Act does not authorize the Attorney General to obtain information that would indicate the size of a scrap metal business or to base the fee on factors such as business size or the place of business.)
- Children and Families, child support enforcement, November 16, 2015. The Committee suggested the agency clarify how the Secretary for Children and Families would determine whether funds for child support enforcement were sufficient to reduce the fee in non-public-assistance (non-PA) cases; the fee is a percentage of child support enforcement collections distributed to the applicant or recipient. (The agency responded that the proposed rule and regulation reduced the Secretary's authority to change the rate in non-PA cases and added "statewide" to the subsection in question, so that the rule and regulation allows the Secretary to reduce the percentage statewide, "commensurate with the department's available funds," if agency funds are sufficient to pay for some or all of the costs associated with non-PA cases statewide.)
- Emergency Medical Services, continuing education, November 16, 2015. The Committee expressed its concern that the additional time proposed for continuing

education could be a burden on emergency medical responders and suggested the Economic Impact Statement include costs to individuals who must meet the proposed continuing education requirements or costs to agencies with paid staff who must backfill responder spots during the additional training proposed. (The agency said the Board was revisiting the proposals; different versions were presented at the Committee's March 22, 2016, meeting.)

- Health and Environment, environmental contamination risk management program, March 14, 2016. The Committee expressed its concern about whether agency staff could absorb the work of the new risk management plan program. (The agency responded that the new program offers another option for remediation and the overall number of sites managed by existing staff was expected to remain relatively constant. However, as the program is voluntary, projecting future participation is challenging.)

### ***Information Requests***

- Revenue, Alcoholic Beverage Control, automated wine dispensing, August 10, 2015. The Committee requested information on controls considered to prevent a patron of legal age from providing an active access card to an underage person. (The agency responded it had opposed elimination of the requirement for a face-to-face interaction in the dispensing of alcohol and believed the language of the proposed rules and regulations was the best option to mitigate the risks. It noted the regulations require controls such as requiring a patron to present identification before accessing an automated dispensing machine for the first time during a business day and when the 15-ounce limit on a card has been reached and requiring the licensee to video record the automated self-dispensing machine and provide the video to an agency agent or law enforcement officer upon request for at least 60 days.)
- Secretary of State, voter registration, August 10, 2015. The Committee noted two paragraphs of a proposed rule and regulation allow an applicant for voter registration to provide an affidavit when proving citizenship under certain circumstances, and it asked whether an affidavit process could be allowed under additional circumstances and, if so, under what circumstances. (The agency's response stated the Secretary of State does not believe an affidavit process should be allowed under any additional circumstances and believes language in statute and regulation is sufficient to allow persons attempting to register to vote to meet the legal requirements.)
- Agriculture, Animal Health, reportable diseases, June 1, 2016. The Committee requested additional information about bovine leukosis and the reason it is proposed for deletion from the list of reportable infectious diseases. It also asked the agency to determine what other states have bovine leukosis as a reportable disease and how their reporting requirements are met. (The agency provided information about bovine leukosis, its transmission, and testing for the disease. It stated the disease was removed for several reasons: the disease is endemic within the State, the agency is unable to supply resources to remove diseased animals from herds, there is no program funding or indemnity, positive animals are rarely reported, and most western states do not require reporting of this disease.)

## ***Program Concerns***

- Secretary of State, voter registration, August 10, 2015. The Committee expressed its concern that not all county election officers contact potential voters whose applications are incomplete in the manner recommended by the State Election Director and suggested the minimum contact requirements be included in the rules and regulations. (The agency's response stated the Secretary was issuing guidelines concerning the contact of potential voters who had not completed voter registration and was conducting a survey of every county election office to ensure the minimum voter-contact efforts were being conducted.)
- Nursing, licenses, January 7, 2016. In two proposed rules and regulations, the Committee requested the agency, with the assistance of the Office of the Attorney General, review use of the phrase "deterioration through the aging process." The Committee suggested protection of the public can be achieved through the review of "physical or mental disability or condition." (The phrase "deterioration through the aging process" was removed.)
- Healing Arts, physician assistants, January 7, 2016. The Committee expressed its concern with the proposal to have no limit on the number of physician assistants under one physician's supervision at the main practice location. (The agency responded that many comments were received on this topic, and the Board chose to not impose numerical supervision limitations. It also noted there is no corresponding restriction on the number of advanced practice registered nurses who may collaborate with a single physician, regardless of location of practice.)
- Racing and Gaming, certification and licensing, February 8, 2016. The Committee noted most professional licenses in Kansas are issued for periods of no longer than two years and expressed its concern that a three-year cycle would allow people who no longer meet standards to operate for too long a period before their qualifications were reviewed. (The proposed changes to rules and regulations to increase the gaming license renewal period from two to three years were withdrawn.)

## **Legislative Action**

Of the 112 bills enacted in 2016, 20 contained provisions authorizing, requiring, moving, or clarifying authority for rules and regulations. The following list summarizes those statutory changes. Statutory deadlines that were specified are mentioned. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2016 *Summary of Legislation*, available from the Kansas Legislative Research Department's website.

### ***Accountancy, Board of***

**HB 2536** clarifies the practice of certified public accountants and revises law to reflect changes in the profession. It removes authority for the Board of Accountancy to issue rules and regulations regarding notification and renewal of a permit for an out-of-state certified public accountant that meets certain requirements. (This change does not affect any effective rules and regulations; no such rules and regulations have been promulgated.)

### ***Aging and Disability Services, Department for***

**SB 449** authorizes the Secretary for Aging and Disability Services to adopt rules and regulations to implement the provisions of the bill, which provides for the development, establishment, and enforcement of standards for the care, treatment, health, safety, hygiene, welfare, and comfort of individuals receiving care from residential facilities licensed under the bill, serving those with mental illness, developmental disability, or other disability. It specifically authorizes rules and regulations that allow a facility for individuals with mental illness or disabilities receiving assistance through the Department to assist an individual with the taking of medication when the medication is in a labeled container dispensed by a pharmacist; regarding the initial application for license and renewal of licensure fees; and regarding appeals of disqualification from employment.

**HB 2615** removes a requirement for the Secretary for Aging and Disability Services to adopt rules and regulations with respect to licensed substance abuse treatment facilities that include minimum qualifications for employees of licensed or certified programs that are less than the qualifications required for a registered alcohol and other drug abuse counselor.

### ***Agriculture, Department of***

**HB 2480** authorizes the Animal Health Commissioner to adopt and enforce rules and regulations governing brand inspections and allows brand inspectors and special investigators to aid in the investigations and prosecutions of violations of Kansas livestock laws and rules and regulations.

**HB 2490** authorizes, beginning July 1, 2017, a three-year license for each technical representative of a weights and measures service company who has had ten years of continuous licensure with no administrative enforcement action adjudicated against that representative. The Secretary will be authorized to promulgate rules and regulations to require technical representatives who have been adjudicated as in violation of this legislation or rules and regulations to seek renewal of a license on an annual basis, as well as establish criteria for reinstatement of eligibility for the three-year license.

### ***Attorney General***

**SB 367** creates and amends law related to the Kansas juvenile justice system. It requires the Attorney General, in collaboration with the Kansas Law Enforcement Training Center and the State Board of Education, to promulgate rules and regulations by January 1, 2017, to create skill development training for responding effectively to misconduct in school while minimizing student exposure to the juvenile justice system. The bill requires the superintendent of each school district or the superintendent's designee and any law enforcement officer primarily assigned to a school to complete the training. (The corresponding rules and regulations were heard at the November 16, 2016, meeting.)

**Senate Sub. for HB 2056** creates and amends law relating to sureties and bail enforcement agents. It authorizes the Attorney General to adopt rules and regulations necessary to carry out its provisions. It specifically authorizes the Attorney General to fix in rules and regulations fees to cover costs of administering the provisions of the bill; the bill includes limits on the amounts of the fees. (The corresponding rules and regulations were heard at the September 6, 2016, meeting.)

### ***Bank Commissioner, State***

**SB 390** authorizes the State Bank Commissioner, in collaboration with the Credit Union Administrator, to promulgate rules and regulations regarding savings promotions in which a person would deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion. The bill requires the promotions be conducted in a manner to ensure each entry has an equal chance of winning the designated prize.

### ***Behavioral Sciences Regulatory Board***

**HB 2615** requires the Behavioral Sciences Regulatory Board establish in rules and regulations a fee (not to exceed \$200) for the renewal of a temporary psychologist license and fees for application, issuance, and renewal of licenses under the Licensure of Master's Level Psychologists Act. (The corresponding rules and regulations were heard at the January 7, 2019, meeting.)

### ***Children and Families, Department for***

**SB 418** moves authority for rules and regulations related to staff secure facilities from the Department of Health and Environment (KDHE) to the Department for Children and Families. It also changes the deadline for those rules and regulations from January 1, 2014, to January 1, 2017. (In 2014, KDHE had finalized rules and regulations related to these facilities.)

### ***Commerce, Department of***

**Senate Sub. for HB 2509** authorizes, for purposes of recovering application processing, oversight, administrative, and other costs, an application fee of up to \$750 for economic development incentive programs administered wholly or in part by the Secretary of Commerce. It also authorizes an administrative application fee for sales tax and revenue (STAR) bond issuance of up to 1 percent, not to exceed \$200,000, and recovery of actual costs exceeding the fee. The bill authorizes the Secretary of Commerce to adopt rules and regulations to implement those provisions.

### ***Corrections, Department of***

**SB 367** creates and amends law related to the Kansas juvenile justice system. It requires the Secretary of Corrections to adopt, by January 1, 2017, rules and regulations developed in consultation with the Supreme Court for a statewide system of structured community-based graduated responses for technical violations of probation, violations of conditional release, and violations of a condition of sentence by juveniles; the graduated responses are to be utilized by community supervision officers. The bill also requires the Secretary to promulgate, by January 1, 2017, rules and regulations regarding earned time calculations for juveniles. (The corresponding rules and regulations regarding community-based responses were heard at the March 7, 2017, meeting.)

### ***Cosmetology, Board of***

**HB 2456** states no tanning facility shall provide access to a tanning device for any person younger than 18 and authorizes the Board of Cosmetology to assess a fine of no more than \$250 against a licensee for each violation. It authorizes rules and regulations necessary to

effectuate these provisions, to be adopted no later than January 1, 2017. (The corresponding rules and regulations were heard at the September 6, 2016, meeting.)

### ***Credit Unions, Department of***

**SB 390** authorizes the Credit Union Administrator, in collaboration with the State Bank Commissioner, to promulgate rules and regulations regarding savings promotions in which a person would deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion. The bill requires the promotions be conducted in a manner to ensure each entry has an equal chance of winning the designated prize.

### ***Education, State Board of***

**Sub. for SB 323** includes the Jason Flatt Act, which requires the board of education of each school district to provide suicide awareness and prevention programming to all school staff. The bill requires the Board of Education to adopt rules and necessary to implement the Act by January 1, 2017. (The corresponding rules and regulations were heard at the September 6, 2016, meeting.)

### ***Healing Arts, Board of***

**HB 2615** enacts the Acupuncture Practice Act, which prohibits the practice of acupuncture without an acupuncture license as of July 1, 2017. It authorizes the Board of Healing Arts to promulgate rules and regulations to administer the provisions of the Act, including licensure requirements and continuing education requirements. The bill specifically authorizes rules and regulations regarding verification of the applicant's practice of acupuncture, appropriate continuing education requirements for inactive licensees to become licensed to regularly practice acupuncture within Kansas, and fees. The bill also requires the Board to adopt rules and regulations to establish minimum education and training requirements for the practice of dry needling by a licensed physical therapist. (The corresponding dry needling rules and regulations were heard at the January 3, 2017, meeting. The corresponding rules and regulations regarding acupuncturists were heard at the October 24, 2017, meeting.)

HB 2615 also enacts law regarding the independent practice of midwifery. It requires the Board of Healing Arts, in consultation with and with the concurrence of the State Board of Nursing, to adopt rules and regulations pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests and diagnostic services, prescribing drugs, and referral or transfer to physicians in the event of complications or emergencies. It requires the rules and regulations to be adopted by January 1, 2017.

### ***Health and Environment, Department of***

**House Sub. for SB 227** authorizes the Secretary of Health and Environment to adopt rules and regulations to implement the Contaminated Property Redevelopment Act, including a fee for a Certificate of Environmental Liability Release (which is to be based on the size and complexity of the site and cannot exceed \$2,000).

**House Sub. for SB 402**, which removes a prohibition on medication step therapy for Medicaid recipients, requires the Medicaid Drug Utilization Review Board to review and approve any proposed policy or rule and regulation related to step therapy. It further requires the Mental Health Medication Advisory Committee and the Medicaid Drug Utilization Review Board to

review and approve any proposed policy or rule and regulation related to step therapy for medication used to treat mental illness.

***Regents, Board of***

**HB 2622** requires the State Board of Regents to publish degree prospectus information for each undergraduate degree program offered by each postsecondary educational institution and authorizes the Board to adopt rules and regulations to implement those provisions.

***Revenue, Department of***

**House Sub. for SB 280** requires a county appraiser to follow methodologies developed by the Director of Property Evaluation to value specific types of property. Prior to January 1, 2017, the Secretary of Revenue is authorized to adopt rules and regulations necessary to administer those provisions.

**HB 2522** authorizes the Secretary of Revenue to adopt rules and regulations to implement a program to permit an electronic online renewal of a driver's license to a license holder who meets specified criteria.

***State, Secretary of***

**Senate Sub. for HB 2112** authorizes the Secretary of State to issue rules and regulations with respect to service of process related to mergers and consolidation of stock corporations and nonstock corporations.

***Transportation, Department of***

**House Sub. for SB 245** authorizes the Secretary of Transportation to adopt rules and regulations to implement a memorial signage program under the Kyle Thornburg and Kylie Jobe Believe Act. Each such memorial sign will commemorate those killed in an accident in which the driver of the other vehicle was under the influence of alcohol or drugs. Applications for the signs are required.

***Turnpike Authority***

**SB 373** authorizes the Kansas Turnpike Authority to adopt rules and regulations regarding enforcement of payment of tolls. The bill authorizes notices of toll evasion that may include a toll-evasion civil penalty, administrative fee, and costs for each instance of an unpaid toll. The bill also authorizes enforcement of payment through denial of vehicle registration after January 1, 2018, if the amount of tolls due exceeds \$100 and certain notices have been sent to the vehicle owner.

**REPORT OF THE OVERSIGHT ACTIVITIES OF THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
July 2014 through June 2015**

From July 2014 through June 2015, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 29 different state executive branch agencies or agency divisions that have separate agency numbers. To review all of the proposed rules and regulations within their public comment periods as required by law, the Joint Committee met eight times.

The dates of Joint Committee meetings, the state agencies appearing before the Committee on such dates, and the main topics of the proposed rules and regulations by date are listed in the following table.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2014 - June 2015</b>								
<b>Agency</b>	<b>July 14, 2014</b>	<b>Sept. 2, 2014</b>	<b>Oct. 13, 2014</b>	<b>Dec. 2, 2014</b>	<b>Jan. 28, 2015</b>	<b>Feb. 20, 2015</b>	<b>March 13, 2015</b>	<b>May 6, 2015</b>
<b>Aging and Disability Services</b>		Adult care home operators						
<b>Agricultural Remediation</b>				Limit remediation reimbursement				
<b>Agriculture – Animal Health Division</b>	Cervids (deer, elk)							
<b>Agriculture – Water Resources Division</b>							Safe yield, GWD #2	
<b>Attorney General</b>	Building signs regarding firearms							
<b>Bank Commissioner</b>	Fees							
<b>Barbering</b>				School requirements				
<b>Behavioral Sciences</b>	Professional counselors education							
<b>Corporation Commission</b>		Emergency management for energy operators*(1); natural gas pipeline safety					Motor carrier safety; oil and gas production safety*	Motor carrier driver hours*

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<b>Corrections</b>	Good time credits for juveniles*							
<b>Education</b>	Teacher licensure; fingerprinting							
<b>Emergency Medical Services</b>		Ambulance equipment	Reinstating attendant certificate			Education standards		
<b>Health and Environment (KDHE)</b>		Air quality standards	Surface water quality standards				Background checks for certain workers	
<b>Housing Resources</b>						Installation, manufactured housing		
<b>KDHE – Division of Health Care Finance</b>						Prior authorization	KanCare Prompt Payment Act	
<b>Indigents' Defense</b>		Defendant reimbursement of attorney fees						
<b>Insurance</b>		Long-term care insurance*(1)		Filing requirements; long-term care insurance; advertising		Holding company reporting	Health policy renewal*	
<b>KBI</b>	Electronic reporting by district courts							
<b>Labor – Division of Workers Compensation</b>			Medical fees					
<b>Nursing</b>				Fees				
<b>Optometry</b>							Continuing education, liability insurance	
<b>Pharmacy</b>	Prescription monitoring* (1)	Prescription monitoring		Electronic prescriptions; repeal repository program			Addition to Schedule I list	
<b>Real Estate Appraisal</b>			Education for new appraisers				Fee reduction	

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<b>Regents</b>					GED scores; post-secondary admissions; fees			
<b>Revenue</b>	Liquefied petroleum fuel tax		Tax credits for scholarship program					
<b>Revenue – Property Valuation Division</b>	Real estate valuation					Appraising complex industrial property		
<b>State Employee Health Care</b>				Eligibility				
<b>Technical Professions</b>	Licensing: geologists and land surveyors					Continuing education*		
<b>Wildlife, Parks and Tourism</b>	Big game hunting; use of dogs	Fees; fishing, protected species		Fishing line identification; vehicle permit placement		Deer permits	Antelope, elk, and deer seasons	Deer season for Fort Riley

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2015.  
 (1) The proposed rule and regulation was withdrawn.

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. All comments and responses are available for public inspection.

**Examples** of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response, is summarized in parentheses.

### ***Adoption by Reference***

- KDHE, surface water quality standards, October 13, 2014. The Committee encouraged the agency to cross-reference items adopted by reference to aid the reader in locating associated items. (The agency stated a document is cross-referenced only the first time it is referenced in a rule and regulation.)
- Board of Pharmacy, electronic prescriptions for Schedule II drugs, December 2, 2014. The Committee noted the proposed rules and regulations referred to 21 CFR Part 1311 and suggested the federal regulation be adopted by reference. (The agency responded any electronically transmitted prescription for a controlled substance would have to comply with the requirements of 21 CFR Part 1311 as a matter of federal law, so the requirements did not need to be established in state law – the reference was informational rather than substantive.)

### ***Authority for Rules and Regulations***

- Education, fingerprinting of teachers, July 14, 2014. The Committee requested the Board consider seeking statutory authority for requiring fingerprinting of teachers who have maintained licensure since before 2002. (The agency responded the *Kansas Constitution* gives the Board authority to supervise the public schools and to adopt regulations for purposes such as the issuance and renewal of licenses for teachers without any further legislative action. The Board unanimously approved the proposed rule and regulation amendments.)

### ***Clarity***

- Real Estate Appraisal Board, education requirements for new appraisers, October 13, 2014. The Committee noted the rule and regulation appeared to reference bachelor's degrees awarded from community colleges. (The agency agreed and said the language will be corrected upon subsequent revision of this rule and regulation.)
- Corporation Commission, adoption by reference of federal motor carrier safety regulations, May 6, 2015. The Committee requested review of the state definition of "agricultural commodity" to determine whether it should be made consistent with the federal definition. The Committee also requested review of deletion of a definition for "automatic on-board recording device," a term used in another portion of the rules and regulations. (The agency said it intends to revise the definition of "agricultural

commodity” to make it consistent with the federal definition the next time this rule and regulation is amended. It also reported it retained the definition of “automatic on-board recording device.”)

### ***Compliments***

- Regents, fees for private and out-of-state postsecondary institutions, January 28, 2015. The Committee commended the agency for evaluating the amounts needed to pay budgeted expenses and reducing the rates to be paid by private and out-of-state postsecondary institutions to receive and maintain certificates of approval to operate in the state. (The agency expressed appreciation for the comment.)

### ***Economic Impact Statements***

- Bank Commissioner, reductions in mortgage business and credit services organization fees, July 14, 2014. The Committee urged the agency to specify the amount of impact of the fee reduction. (The agency included specific amounts in revised Economic Impact Statements and also included the overall budget amount for the Consumer and Mortgage Lending Division.)
- Revenue, Tax Credit for Low Income Students Scholarship Program, October 13, 2014. The Committee requested the agency enhance the Economic Impact Statement to reflect the impact of the cost to the agency of implementing the program. (The agency revised the statements to reflect agency costs.)

### ***Information Requests***

- Corrections, good-time credits for juveniles, July 14, 2014. The Committee requested the agency report to the Joint Committee on Corrections and Juvenile Justice Oversight by July 1, 2015, on the impacts of the changes made by the agency with the presented rules and regulations. (The report was distributed to members of both the Joint Committee on Corrections and Juvenile Justice Oversight and the JCARR.)
- Corporation Commission, emergency management for energy operators, September 2, 2014. The Committee expressed concern with the issue of small utilities having procedures or plans for those consumers who have critical need for service in times of outage and requested a response. (The proposed rule and regulation was withdrawn. The Commission directed its staff to revise the rule and regulation in light of comments from the public and the Joint Committee.)
- Board of Barbering, minimum requirements for a school or college of barbering, December 2, 2014. The Committee asked why a separate entrance is necessary if a building is also used to operate a business or school that conducts or teaches anything other than barbering. (The agency responded a separate entrance is necessary to limit traffic to the barber school and to minimize potential sanitary issues, giving as an example the sharing of a barber school space with a restaurant. The agency said the requirement also is similar to a continuing separate entry requirement for a barbershop.)

- State Employee Health Care Commission, eligibility for health care benefits, December 2, 2014. The Committee asked when the 1,000-hour threshold for eligibility was implemented for an employee to qualify as a primary participant in the State Health Care Benefits Program. (The agency responded the threshold was implemented on October 1, 1988.)
- KDHE, Health Policy, prescription drug prior authorization, February 20, 2015. The Committee requested the names of the people on the Preferred Drug List Advisory Committee and a written description of the process of placing and removing drugs from the prior authorization drug list. (The agency provided the names and a summary of the processes.)
- KDHE, Health Policy, KanCare Prompt Payment Act, March 13, 2015. The Committee asked to know the identity of the person or entity responsible for determining whether a clean claim is *bona fide*. The Committee also asked who is responsible to monitor for patterns in payment (*e.g.*, whether a type of provider has an unusually high proportion of claims that are not “clean”) and what processes, in addition to filing lawsuits, are available to protect providers when they have relatively low dollar claims. (The agency responded that KSA 39-709f does not give KDHE authority to use its own monitoring to enforce the Prompt Payment Act nor enforcement power to any other agency. It stated the agency will remind providers of their obligations and could bring suit if the failure to make timely payments rises to the level of a material breach of the KanCare agreement.)

## Legislative Action

Of the 104 bills enacted in 2015, 29 contained provisions authorizing, requiring, moving, or clarifying authority for rules and regulations. The following list summarizes those statutory changes. Statutory deadlines that were specified are mentioned. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2015 *Summary of Legislation*, available from the Kansas Legislative Research Department’s website.

### ***Agriculture, Department of***

**SB 156** permits a water right owner or a group of water right owners in a designated area to enter into a consent agreement and order with the Chief Engineer of the Division of Water Resources to establish a water conservation area. It requires the Chief Engineer to adopt rules and regulations to implement these provisions.

**SB 189** directs the Animal Health Commissioner to promulgate rules and regulations by December 31, 2015, regarding acceptable methods of euthanasia. The bill also directs the Board of Veterinary Examiners to establish in rules and regulations the information and proof of qualifications needed for obtaining an institutional license to practice veterinary medicine; an applicant must be employed by a school of veterinary medicine in the state. (In 2014, SB 278 transferred all duties, powers, employees, and funding of the Board of Veterinary Examiners into the Division of Animal Health in the Department of Agriculture, until July 1, 2016. The Board retains rules and regulations authority, and proposed rules and regulations are to be formally proposed by the Secretary of Agriculture.) (The corresponding euthanasia rules and regulations were heard at the February 8, 2016, meeting; the corresponding fee for institutional license rules and regulations were heard March 22, 2016.)

## ***Attorney General***

**SB 206** authorizes the Attorney General to adopt rules and regulations needed to administer the provisions of the Vision Care Services Act regarding discount cards and vision care discount plans. Those rules and regulations are to be adopted by January 1, 2016.

**HB 2048** authorizes the Attorney General to adopt rules and regulations necessary to implement the provisions of the Scrap Metal Theft Reduction Act. (The corresponding rules and regulations were heard at the September 28, 2015, and September 6, 2016, meetings. The repeal of the rules and regulations was heard at the August 2, 2017, meeting. 2017 SB 149 and 2018 SB 261 delayed or made unenforceable certain provisions until January 1, 2019, and January 1, 2020, respectively.)

**HB 2111** removes authority for the Attorney General to adopt rules and regulations regarding the collection of restitution or debts owed to courts. Instead, the bill specifies the Supreme Court may adopt rules on this topic. (KAR 16-9-1 was revoked effective December 16, 2016.)

**Senate Sub. for HB 2124** adds the Attorney General to the Department of Revenue as those authorized to promulgate rules and regulations regarding the units sold by each tobacco product manufacturer for each year.

**HB 2256** authorizes the Attorney General to adopt rules and regulations to implement and administer the provisions of the Open Records Act and the Open Meetings Act.

## ***Bank Commissioner and Banking Board***

**SB 240** specifies the fees to be paid by applicants for a bank or trust company charter, new branch bank, trust authority, or other specified business locations or arrangements and authorizes the Bank Commissioner to adopt rules and regulations to increase those fees to amounts no more than 150 percent of the statutory amounts. The bill also removes authority for the State Banking Board to adopt rules and regulations for a plan of operation for the management of funds for state banks and trust companies. (No specific rules and regulations on this topic appear to have been promulgated.)

## ***Children and Families, Department of***

**Senate Sub. for HB 2258** requires the Secretary for Children and Families to adopt rules and regulations to determine eligibility for the child care subsidy program and child care support not provided through Temporary Assistance to Needy Families. The bill also removes authority for the Secretary to adopt rules and regulations regarding general assistance and removes authority to extend a deprivation requirement under the definition of “dependent children” to include being deprived of parental or guardian support or care by reason of the unemployment of a parent or guardian. The bill also references rules and regulations to be adopted regarding work participation by parents of certain newborns. (The corresponding rules and regulations were heard at the December 10, 2018, meeting.)

**Executive Reorganization Order 43** transfers rules and regulations authority regarding foster care licensing to the Department for Children and Families (DCF) from the KDHE, effective July 1, 2015.

## ***Corporation Commission***

**House Sub. for SB 91** repeals authority for the Corporation Commission to promulgate rules and regulations to establish renewable portfolio requirements, calculate and report the statewide retail rate impact of the portfolio requirements, set penalties for violations of portfolio requirements, and establish a certification process for use of renewable energy resources. The bill continues all Commission rules and regulations in effect on June 30, 2015, that allow a utility to recover costs incurred to meet the renewable portfolio standard. The bill also enacts the Renewable Energy Standards Act. (The corresponding rules and regulations were heard at the January 3, 2017, meeting.)

## ***Education, Board of***

**House Sub. for SB 7** authorizes the State Board of Education to adopt rules and regulations for the administration of the provisions of the Classroom Learning Assuring Student Success Act, which replaced the former school funding formula. The section is effective through June 30, 2017.

**Senate Sub. for Sub. for HB 2170** authorizes the Board to adopt rules and regulations as necessary, by March 1, 2016, to implement the Freedom from Unsafe Restraint and Seclusion Act. (The corresponding rules and regulations were heard at the March 14, 2016, meeting.)

## ***Fire Marshal***

**HB 2097** authorizes the State Fire Marshal to adopt rules and regulations governing the composition, training requirements, response, and operations of regional search and rescue teams.

## ***Healing Arts, Board of***

**Senate Sub. for HB 2225** requires the Board of Healing Arts to adopt rules and regulations establishing appropriate continuing education requirements for exempt physician assistant licensees to become licensed to regularly practice as physician assistants in Kansas. It requires the Board to adopt rules and regulations regarding issuance, maintenance, and renewal of a resident active license created by the bill. It authorizes rules and regulations regarding special permits for physicians in training. It also added an effective date deadline of January 11, 2016, to a requirement for rules and regulations governing the practice of physician assistants. The bill states charges for copies of health care records shall not exceed charges established by the Board in rules and regulations, and it authorizes the Board to adopt and enforce rules and regulations that require Board licensees to furnish health care records to patients or their authorized representatives. (The corresponding physician rules and regulations were heard at the January 7, 2016, meeting.)

## ***Health and Environment, Department of***

**House Sub. for SB 36** authorizes the Secretary of Health and Environment to adopt rules and regulations to implement the Local Conservation Linked Deposit Lending Program. The purpose of the program is to facilitate loans by eligible financial institutions for the

construction, design, rehabilitation, and enhancement of nonpoint source water pollution control systems for public or private owners.

**SB 124** authorizes the Secretary of Health and Environment to adopt rules and regulations on the land-spreading of solid waste generated by drilling oil and gas wells. It references rules and regulations the Secretary is to adopt by July 1, 2016, regarding concentrations of low-level radioactive waste that is naturally occurring radioactive material (NORM) or technologically enhanced NORM (TENORM) waste. The bill also clarifies that best management practices and maximum loading rates for disposal of solid waste generated by drilling oil and gas wells using land-spreading are to be established in rules and regulations. The bill also specifies rules and regulations on water quality standards may include standards variances that may apply to specified pollutants, permittees, or waterbody segments that reflect the highest attainable condition during the specified time period for the variance. (Corresponding rules and regulations were heard at the August 2, 2017, meeting.)

**Senate Sub. for HB 2149** states KDHE shall promulgate, before July 1, 2016, rules and regulations necessary to implement reimbursement to a medical care facility for prescribed medically necessary donor human breast milk provided to a recipient of medical assistance.

**HB 2192** authorizes the Secretary of Health and Environment to adopt rules and regulations necessary to implement new provisions in the Kansas Storage Tank Act that waive the “deductible” a tank owner must pay before being eligible for Underground Storage Tank Trust Fund moneys to assist with cleanup, if contamination is discovered when the owners of single-wall underground petroleum tanks replace all components with secondary containment systems that meet certain requirements.

**HB 2193** establishes the Voluntary Risk Management Program (Program), which will be administered by KDHE for low-risk contaminated sites. A responsible party that chooses to participate in the Program enters into an enforceable agreement with KDHE to carry out remediation activities agreed to in a risk management plan. The bill requires the Secretary of Health and Environment to adopt rules and regulations to implement the provisions. (The corresponding rules and regulations were heard at the March 14, 2016, meeting.)

**HB 2233** establishes the procedure for developing and submitting a state plan to the federal Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan rule. Prior to submitting any state plan to the EPA, the Secretary of Health and Environment is required to obtain the approval of a legislative Clean Power Plan Implementation Study Committee and submit such state plan as proposed rules and regulations.

**Executive Reorganization Order 43** transfers all powers, duties, and functions of the DCF Economic and Employment Services Section that determines eligibility for Medicaid services to KDHE, effective January 1, 2016. The transfer includes rule and regulation authority.

### ***Insurance, Commissioner of***

**SB 206** authorizes the Insurance Commissioner to adopt rules and regulations needed to administer the provisions of the Vision Care Services Act regarding any insurer, health insurer, health benefit plan, or vision care insurance provider. Those rules and regulations are to be adopted by January 1, 2016.

**HB 2352** authorizes the Commissioner to adopt rules and regulations regarding excess lines insurance, no later than January 1, 2017.

### ***Regents, Board of***

**Senate Sub. for HB 2353** allows the Board of Regents to adopt policy to authorize state educational institutions to provide leave time to university support staff. Under continuing law, such a policy is allowed for application to classified employees, and the Board is authorized to adopt any needed rules and regulations on the topic of leave for these employees.

### ***Revenue, Department of***

**SB 109** creates the Kansas Disaster Utilities Response Act (Act). Under the Act, out-of-state businesses conducting operations within the state for disaster or emergency-related work are not considered to have established a level of presence requiring registration, licensing, or filing or remitting state or local taxes. The bill authorizes the Department of Revenue to promulgate rules and regulations needed to implement the Act.

**Senate Sub. for HB 2109** authorizes rules and regulations or administrative guidelines regarding a tax amnesty program available to certain taxpayers. It also requires the Secretary of Revenue to adopt rules and regulations to implement taxation on electronic cigarettes. (The corresponding rules and regulations were heard at the January 3, 2017, meeting.)

**Senate Sub. for HB 2155** requires the Secretary of Revenue to adopt rules and regulations to implement license requirements for nonprofit organizations conducting raffles and governing the conduct of raffles by those nonprofit organizations, upon recommendations of the Administrator of Charitable Gaming (Administrator) (a position created by the bill). Also upon recommendation of the Administrator, the Secretary is required to adopt all rules and regulations necessary for the administration and enforcement by the Administrator of the Kansas Charitable Gaming Act regarding bingo and raffles. Those rules and regulations must include reasonable criteria for approval of applications for registration. (The corresponding rules and regulations were heard at the November 16, 2015, and January 7, 2016, meetings.)

**HB 2223** authorizes the Secretary of Revenue to adopt rules and regulations necessary to implement provisions allowing a public venue, club, or drinking establishment to offer customer self-service of wine from automated devices on licensed premises under certain circumstances. The bill also authorizes the Secretary to adopt rules and regulations to implement annual vineyard permits that enable the holders, who each must have more than 100 vines, to sell wine on the premises. (The corresponding rules and regulations were heard at the August 10, 2015, meeting.) [Note: In 2019, SB 70 replaced the term “vineyard permit” with “producer license.”]

### ***Secretary of State***

**HB 2104** moves municipal elections from spring to fall and requires the Secretary of State to promulgate rules and regulations by July 1, 2016, regarding the style and form of the official primary ballot and the official general election ballot for municipal offices, the declaration of intent to become a candidate, primary election procedures for municipal primary and general elections, conduct of elections, and the arrangement of names on the ballot.

### ***Tax Appeals, Board of***

**House Sub. for SB 7** places into a new statute continued authority for the Board of Tax Appeals to adopt rules and regulations regarding and amount of *ad valorem* tax on taxable tangible property a school district may levy, including rules and regulations on evidence required in support of certain school district claims.

### ***Treasurer, State***

**HB 2216** authorizes the State Treasurer to promulgate rules and regulations necessary to implement the Kansas ABLE (Achieving a Better Life Experience) Savings Program, a tax-deferred savings program authorized by the passage of the federal ABLE Act for the purpose of empowering individuals with disabilities and their families to save private funds to support the individuals with disabilities, and to provide guidelines for the maintenance of such accounts. The bill also authorizes the Treasurer to promulgate rules and regulations to provide that every contract, application, or similar document associated with the account clearly indicate the account is not insured by the State and that neither the principal nor the investment return are guaranteed by the State.

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<b>Abstracters' Board of Examiners</b>								Fees*
<b>Accountancy</b>				CPA exam,; standards				
<b>Administration</b>								Job injury leave; furloughs*
<b>Aging and Disability Services</b>		Adult care homes; aides	Adult care home assessment					
<b>Agriculture – Animal Health Division</b>	Cattle diseases							
<b>Agriculture – Water Resources Division</b>				Water rights				
<b>Attorney General</b>		Concealed carry signs; Roofing Registration Act						
<b>Bank Commissioner</b>							Loan documents; appraisals	
<b>Behavioral Sciences</b>		Addiction counselor licensing						
<b>Commerce</b>	High Performance Incentive Program							

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<b>Commerce – Athletic Commission</b>	Eligibility; fees; misc.						Fees; testing; boxing*	
<b>Corporation Commission</b>	Hydraulic fracturing							
<b>Corrections</b>	Certain grievances						Inmate communications	
<b>Cosmetology</b>	Students; tattooing, piercing (1)							
<b>Crime Victims Compensation</b>			Payments, misc.					
<b>Dental</b>				Continuing education				
<b>Education</b>			Celebrate Freedom Week					
<b>Emergency Medical Services</b>	Graduated sanctions		Ambulance service permit; credentials	Staffing; authorized activities for EMTs (3)				
<b>Fire Marshal</b>	Explosives				LP gas; training			
<b>Health and Environment (KDHE)</b>	Land-spreading		Tiny-K services	Staff secure facilities; occupational exposure			Lab fees; surface water register	
<b>KDHE – Division of Health Care Finance</b>			Eligibility for Medicaid, CHIP; ACA compliance					Prior authorization*
<b>Insurance</b>			Reporting; misc.					
<b>Labor – Division of Workers Compensation</b>		Medical fees						
<b>Library</b>				Internet access policy				
<b>Nursing</b>	Exam fee; LPN IV therapy			Fees				
<b>Pharmacy</b>						Prescription monitoring; fees		
<b>Real Estate Appraisal</b>						Fees		Appraisal experience; fees*

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2013 - June 2014**

<b>Agency</b>	<b>July 22, 2013</b>	<b>Aug. 27, 2013</b>	<b>Nov. 5, 2013</b>	<b>Jan. 7, 2014</b>	<b>March 6, 2014</b>	<b>March 24, 2014</b>	<b>April 29, 2014</b>	<b>May 30, 2014</b>
<b>Revenue</b>		Vehicle registration			Ignition interlock devices			
<b>Revenue – Property Valuation Division</b>			Appraiser qualifications					
<b>Securities Commissioner</b>	Investment advisers							
<b>Technical Professions</b>			License; reciprocity (2)					
<b>Wildlife, Parks and Tourism</b>	Exempt, bird hunting	Fees; bait fish; misc.		Fees; restitution	Exempt, permits		Hunting misc.*	

\* Rules and regulations in this set were NOT published in the *Kansas Register* as final rules and regulations before July 1, 2014.

(1) 3 of the 19 rules and regulations in this set were not published by June 30, 2014

(2) 1 of the 12 rules and regulations in this set was not published by June 30, 2014

(3) 1 of the 4 rules and regulations in this set was not published by June 30, 2014

## Comments to Agencies

After each proposed rule and regulation was reviewed, the Committee expressed comments it deemed appropriate, including commendations, and staff forwarded those remarks to each state agency for consideration. The Committee requested a response to each comment. Staff maintain a database of information about Committee comments and agency responses to them. Agencies responded to all but one of the comments directed to them (the exception is noted below). All comments and responses are available for public inspection.

**Examples** of Committee concerns are summarized below, by general topic. Additional information, including a summary of the agency's response if the response was received by the deadline for this report, is summarized in parentheses.

### ***Adoption by Reference***

- Accountancy, auditing standards, January 7, 2014. The Committee noted the auditing standards mentioned in a proposed rule and regulation had been adopted by reference in a different rule and regulation and suggested a cross-reference to the adoption by reference. (The agency provided no specific response to this comment.)
- Department of Revenue, ignition interlock devices, March 6, 2014. The Committee was concerned that a document was adopted by reference without a specific date for that document; Department of Administration guidance appeared to require such a date. (The agency said it checked with the Department of Administration, and the citation to a *Federal Register* document that included a page number did not require change.)
- Real Estate Appraisal Board, appraisal experience requirements, May 30, 2014. The Committee noted a table was adopted by reference in three rules and regulations and suggested adopting the table in only one rule and regulation and adding cross-references to that adoption by reference in the other two rules and regulations. (The agency stated it would make those changes the next time the rules and regulations in question are amended.)

### ***Authority for Rules and Regulations***

- Department of Agriculture, Division of Water Resources, water rights conservation program, January 7, 2014. The Committee requested review of the Chief Engineer's authority to promulgate rules and regulations related to the Water Rights Conservation Program because the statute establishing the program had not been made part of the Water Appropriations Act. (HB 2429, which would have addressed the issue, passed the House in 2014 and received a hearing in the Senate Committee on Natural Resources, but its contents were not enacted. The bill was mentioned in the agency's response.)
- KDHE, surface water register, April 29, 2014. The Committee suggested the agency review its authority to promulgate this rule and regulation, because the listed

authorizing statute specified a date in 2003 for promulgating rules and regulations. (The agency added a reference to an additional authorizing statute.)

### **Clarity**

- Department of Commerce, Athletic Commission, licensure requirements, July 22, 2013. The Committee asked the agency to clarify what was meant by a “valid, government-issued identification card”; a copy of such identification was to be submitted with an application for a license to compete or serve in any contest. (The agency determined submission of valid photo identification was unnecessary in the context of the rule and regulation, and the requirement was not included in the final rule and regulation.)
- Behavioral Sciences Regulatory Board, addiction counselor requirements, August 27, 2013. The Committee suggested the agency define the terms “cultural sensitivity” and “cultural competence” and use more consistency in its references to cultural issues. (The agency replaced both terms with “culturally informed,” which it called a more precise term that would not require an additional definition.)
- Crime Victims Compensation Board, cooperation with law enforcement, November 5, 2013. The Committee noted the term “offices and agencies with investigatory or prosecutorial responsibilities” used in the proposed rule and regulation includes the fire marshal (KSA 31-137), the Secretary of Labor (KSA 75-5702), the Director of Property Valuation (KSA 79-1406), the Secretary for Aging and Disability Services (KSA 75-5945, KSA 39-1905), and the long term care ombudsman (KSA 75-7306). (The agency replaced the questioned term with “the offices and agencies responsible for investigating the crime or prosecuting the offender.”)
- Board of Accountancy, renewal of a permit to practice, January 7, 2014. The Committee suggested the agency substitute a 30-day limit, rather than the vague “time frame specified by the board,” to specify the time frame for submitting information the Board needs to verify the number of continuing professional education hours an applicant has claimed. (The agency substituted a requirement for a response within 30 days.)
- Department of Administration, furloughs, May 30, 2014. The Committee suggested “lapse in appropriations” should be replaced by words such as “lack of funding” because “lapse in appropriations” has a different meaning than what appeared to be intended in the rule and regulation. The Committee also suggested retaining “notwithstanding” rather than replacing it with “despite,” to retain the legal meaning of “notwithstanding.” (The latter suggestion also was made to the Office of the State Bank Commissioner after the Committee’s April 29, 2014, meeting. The Office stated the Department of Administration said proposed rules and regulations should be drafted to avoid complicated or confusing language, and the use of “notwithstanding” would counter that position.)
- Board of Pharmacy, prescription monitoring program, March 24, 2014. The Committee suggested the agency remove a reference to a statute’s subsection, so that the rule and regulation would not need to be revised if an amendment changed

the subsection designation in the statute. (The agency said the subsection reference provided clarity and did not remove it.)

### ***Compliments***

- Behavioral Sciences Regulatory Board, addiction counselor licensing, August 27, 2013. The Committee expressed its appreciation for the work of the agency and stakeholders in developing the proposed rules and regulations and integrating the regulation of addiction counselors into the work of the Board.
- KDHE, Division of Health Care Finance, November 5, 2013. The Committee expressed its appreciation to the agency staff members who presented the proposed rules and regulations for the expertise they demonstrated in answering questions from Committee members.
- Board of Nursing, fees, January 7, 2014. The Committee commended the agency's executive director for her assistance to leaders in other small regulatory agencies.
- Real Estate Appraisal Board, fees, March 24, 2014. The Committee thanked the agency for being diligent in decreasing fees when the fund balance allows.
- KDHE, laboratory fees, April 29, 2014. The Committee commended the agency on a complete and thorough Economic Impact Statement.

### ***Economic Impact Statements***

- Corporation Commission, hydraulic fracturing, July 22, 2013. The Committee believed the Environmental Benefit Statement included in the Economic Impact Statement did not meet the requirements of KSA 2012 Supp. 77-416(d) because it did not summarize certain risks or specific contaminants. (The agency submitted an expanded Environmental Impact Statement.)
- Department of Wildlife, Parks and Tourism, camping fees, January 7, 2014. The Committee requested documentation of the utility cost increases that the Committee was told prompted the proposed increases in camping permit fees. (The agency submitted information showing utility costs from 2005 to 2013 had nearly doubled, and the fee had increased from \$5.50 to the proposed \$9 in that time frame. The response also noted the fee also pays for associated infrastructure costs.)

### ***Information Requests***

- Board of Cosmetology, tattooing and piercing, July 22, 2013. The agency's representative stated a proposed change to the expiration dates of certain licenses reflected a policy change; the Committee asked when the policy was changed. (The agency responded the expiration date for cosmetology practitioner licenses was changed in approximately 1998, and it is unknown why the rule and regulation was not changed at that time.)
- KDHE, land-spreading of well-drilling wastes, July 22, 2013. The Committee asked what would happen if a land-spreading operation has been approved and not

completed by July 1, 2015, when the exemption under the Solid Waste Act is set to expire. (The agency responded it will seek during the 2015 Session to have the Legislature remove the expiration date and make any other legislative changes required to the program, based on experience with the program to that point. It further stated it will inform anyone with an active approval that no land-spreading may be done after July 1, 2015, if the expiration date is not removed.)

- Department of Education, Celebrate Freedom Week curricula, November 5, 2013. The Committee requested clarification regarding whether the rule and regulation applies to innovative and charter schools. (The agency stated the issue was unresolved and that the Office of the Attorney General had declined a request for an opinion, citing pending action in *Gannon, et al. v. State.*)

### ***Policy Suggestions***

- Board of Cosmetology, tattooing and piercing, July 22, 2013. The Committee stated it believed the addition of mobile facilities to the facilities that can be licensed is a major regulatory change that should be preceded by statutory change and asked why such a statutory change was not requested. (The agency found five mobile body art facilities had been licensed between 1998 and 2009 and stated authority was derived from a KDHE definition of a mobile establishment.)
- KDHE, Tiny-K services, November 5, 2013. The Committee asked whether the agency considered allowing a clinical professional counselor licensed by the Behavioral Sciences Regulatory Board (BSRB) to be among the “qualified personnel” who may provide early intervention services. (The rule and regulation was changed to include clinical professional counselors licensed by the BSRB.)
- KDHE, staff secure facilities, January 7, 2014. The Committee suggested the agency consider reducing the 24-hour time limit for reporting serious incidents and ensure any such time limits be compatible with duty of reporting requirements for professional staff elsewhere in state law. (The agency changed the provision to require reporting upon discovery of the incident or event but no later than 24 hours after discovery.)

### ***Uniformity with Other Law***

- Department for Aging and Disability Services, adult care homes, August 27, 2013. The Committee asked the agency to consider aligning its definition of “concentrated livestock operation” with definitions used by KDHE and the Department of Agriculture and to make its definition of “physician” consistent. (The agency reworded the definition of concentrated livestock operation to coincide with the KDHE definition for confined feeding operations and modified the statutory references in definitions of “physician” to be consistent with law applicable to the Board of Healing Arts.)
- Board of Cosmetology, tattooing and piercing, July 22, 2013. The Committee requested information regarding client-disclosed health information to be retained by the tattoo licensee, the effects of those records on liability, and whether the provisions were acceptable under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Americans with Disabilities Act (ADA). (The agency determined a body arts practitioner is not a “covered entity” under either HIPAA or

ADA. It also said the Board shared the Committee's liability concerns if the record is not specific and that other states also were grappling with how to handle the health information collected from clients.)

- KDHE, Tiny-K services, November 5, 2013. The Committee suggested removing "Kansas" before the names of various boards, to reflect their statutory names. (The agency retained "Kansas," stating that was based on the Attorney General's review of the proposed rule and regulation.)
- Department of Administration, furloughs, May 30, 2014. The Committee asked whether provisions in the rule and regulation for mandatory leave without pay violate any state employment contract statutes or contracts. (The agency responded that mandatory leave without pay due to furlough does not violate any state employment contract statutes or contracts, although an agency conducting furloughs may be required to confer with employee organizations regarding the furloughs.)

## **Legislative Action**

Of the 144 bills enacted in 2014, 21 contained provisions authorizing, requiring, moving, or clarifying authority for rules and regulations. The following list summarizes the authority granted to each agency. Statutory deadlines that were specified are mentioned. The list also includes changes to authority but does not include transfers of authority related to the Governor's executive agency reorganization. For more information on aspects of these bills not related to rules and regulations, the reader is directed to the 2014 *Summary of Legislation*. Dates newly authorized rules and regulations were first heard by the Joint Committee are included in parentheses.

### ***Aging and Disability Services, Department for***

**HB 2418**, the Operator Registration Act, requires the Secretary to adopt by rules and regulations a system for registering adult care home operators. It also requires the Secretary to adopt rules and regulations establishing requirements for reinstatement of people whose registrations have lapsed for failure to renew. All fees under the Act are to be established by rules and regulations. (The corresponding rules and regulations were heard at the September 2, 2014, meeting.)

### ***Agriculture, Department of***

**SB 278** states rules and regulations of the Board of Veterinary Examiners, through June 30, 2016, are to be submitted to the Secretary of Agriculture and formally proposed and adopted by the Secretary. The Secretary may recommend changes to proposed rules and regulations, but the bill requires any changes be approved by the Board.

### ***Attorney General***

**SB 308** clarifies the Attorney General is authorized to promulgate rules and regulations that adopt provisions of the Federal Trade Commission regulations implementing the national do-not-call law including, but not limited to, the telemarketing sales rule in 16 CFR Part 310.

**HB 2578** requires the Attorney General to adopt rules and regulations prescribing the location, content, size, and other characteristics of signs to be posted on any building where carrying an unconcealed firearm is prohibited. (The corresponding rules and regulations were heard at the July 14, 2014, meeting.)

### ***Behavioral Sciences Regulatory Board***

**HB 2744** authorizes the Board to promulgate rules and regulations to implement and administer the Applied Behavior Analysis Licensure Act. (The corresponding rules and regulations were heard at the September 6, 2016, meeting.)

### ***Corporation Commission***

**Senate Sub. for HB 2482** authorizes the Commission to adopt rules and regulations to administer the Energy Efficiency Investment Act, which the bill added to the statutes. The Act's provisions include a requirement the Commission permit electric and natural gas public utilities to implement Commission-approved programs and cost recovery mechanisms to reduce the consumption of electricity or natural gas by retail customers.

### ***Education, State Board of***

**Senate Sub. for HB 2506** authorizes the Board to adopt rules and regulations regarding a specific group of prospective teachers exempted from a requirement to complete a teacher preparation program prior to licensure: teachers with degrees in science, technology, engineering, mathematics, finance, or accounting; five years of work experience in the subject matter area; and commitments from local school district boards to hire them to teach related courses. (The corresponding rules and regulations were heard at the July 14, 2014, meeting.) The bill also requires the Board to adopt rules and regulations regarding filing of documents that support the amount of credit claimed under the tax credit for low income students scholarship program. (The corresponding rules and regulations were heard at the October 13, 2014, meeting.)

### ***Healing Arts, Board of***

**HB 2673** requires the Board take several actions with regard to rules and regulations:

- The bill requires the Board to establish requirements for continuing education for exempt licensees of each branch of the healing arts. (An exempt license may be issued to a person who is not regularly engaged in the practice of healing arts in Kansas and does not hold himself or herself out to the public as being professionally engaged in such practice.)
- The bill requires the Board to establish rules and regulations for the issuance, renewal, and scope of practice for a reentry license (which is created by the bill).
- The bill allows the Board to adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice for the purpose of issuing a license to a person who has been in the active practice of a branch of the healing arts in some other state, territory, or country or the District of Columbia.

- The bill requires the Board to adopt rules and regulations governing the practice of physician assistants. (The corresponding rules and regulations were heard at the January 7, 2016, meeting.)

### ***Health and Environment, Department of***

**SB 254** amends statutes of the State Children's Health Insurance Program and the Medicaid Estate Recovery Program to clarify the rules and regulations authority of the Secretary of Health and Environment over these programs.

HB 2551 repeals statutes that required the Department of Health and Environment to regulate processing and disposal facilities for polychlorinated biphenyls (PCBs), including authority for promulgating rules and regulations on that topic. (The corresponding revocations were heard at the May 14, 2019, meeting.)

**HB 2552** requires the Secretary of Health and Environment to adopt rules and regulations to carry out provisions regarding payment deadlines in any contract between the Kansas Medical Assistance Program and any managed care organization and penalties. The bill requires such contracts to require the allowed amount on all clean claims to be fully paid or denied within 30 days after receipt and the allowed amount on all other claims be fully paid or denied within 90 days after receipt. (The corresponding rules and regulations were heard at the March 13, 2015, meeting.)

### ***Insurance, Department of***

**HB 2668**, which becomes effective July 1, 2017, authorizes the Insurance Commissioner to adopt rules and regulations necessary to carry out the provisions of the Predetermination of Health Care Benefits Act. Under the Act, a health plan that receives an electronic health predetermination request will be required to provide to the requesting health care provider the estimated amounts of expected benefits coverage on the procedures specified in the request.

### ***Investigation, Kansas Bureau of***

**HB 2501** directs the Bureau to adopt rules and regulations by July 1, 2014, requiring district courts to electronically report filings and dispositions to the KBI Central Repository in cases involving the crimes of human trafficking, aggravated human trafficking, selling sexual relations, promoting the sale of sexual relations, buying sexual relations, and commercial sexual exploitation of a child. (The corresponding rules and regulations were heard at the July 14, 2014, meeting.)

### ***Pharmacy, Board of***

**Senate Sub. for HB 2146** requires the Board to establish by rules and regulations the expiration dates for licenses, registrations, and permits issued by the Board and to allow for the prorating of fees for license and registration periods. The bill also authorizes the Board to adopt rules and regulations related to the registration, discipline, training, and oversight of pharmacist interns. (The corresponding rules and regulations were heard at the June 1, 2016, meeting.)

### ***Regents, Board of***

**HB 2544** authorizes the Board to adopt rules and regulations to implement provisions authorizing certain postsecondary educational institutions to enter into the State Authorization Reciprocity Agreement to provide distance education to out-of-state students.

### ***Revenue, Department of***

**Senate Sub. for HB 2506** requires the Secretary of Revenue to adopt rules and regulations regarding filing of documents that support the amount of credit claimed under the Tax Credit for Low Income Students Scholarship Program, which was created by the bill. (The corresponding rules and regulations were heard at the October 13, 2014, meeting.)

**HB 2643** requires the Secretary to adopt, by January 1, 2015, rules and regulations necessary to implement provisions relating to contracting with an independent appraiser to classify and appraise natural gas and helium processing facilities, ethanol facilities, crude oil refineries, fertilizer manufacturing facilities, cement manufacturing facilities, and such other complex industrial properties as otherwise requested by the county appraiser or the taxpayer. (The corresponding rules and regulations were heard at the February 20, 2015, meeting.)

**Senate Sub. for HB 2693** requires the Secretary to adopt, by January 1, 2015, rules and regulations to implement commercial driver's license skills testing by authorized community and technical colleges.

**HB 2727** requires the Secretary to promulgate rules and regulations necessary to remain compliant with certain federal standards regarding parking placards for people with disabilities.

### ***Securities Commissioner, Office of the***

**HB 2152** repeals the Uniform Land Sales Practices Act, including authority for related rules and regulations. (The corresponding revocations were heard at the August 10, 2015, meeting.)

### ***State, Secretary of***

**HB 2130** authorizes the Secretary of State to promulgate rules and regulations on the rights and responsibilities of election officials regarding ballot language statements.

**Sub. for Sub. for HB 2721** authorizes the Secretary to adopt rules and regulations to implement the Business Entity Standard Treatment Act, which centralizes the requirements for the most common filings of corporations, limited liability companies, limited partnerships, and limited liability partnerships with the Secretary. No such rules and regulations may be effective before January 1, 2015.

### ***Tax Appeals, Board of***

**HB 2643** authorizes the Board of Tax Appeals to issue rules and regulations regarding the classification of property constructed with the proceeds of industrial revenue bonds as real

or personal property. (The Court of Tax Appeals was renamed the Board of Tax Appeals with enactment of House Sub. for SB 231.)

### ***Technical Professions, Board of***

**SB 349** authorizes the Board to adopt rules and regulations concerning canceled, inactive, and emeritus licensure status for the professions regulated by the Board. The bill also requires the Board to adopt rules and regulations prescribing minimum standards for boundary surveys, mortgage title inspection, American Land Title Association surveys, and such other surveys as necessary to control the quality of surveying in the state of Kansas. (The corresponding rules and regulations were heard at the July 14, 2014, meeting.)

### **Veterans' Affairs Office**

**Sub. for HB 2681** transfers all rules and regulations of the Kansas Commission on Veterans Affairs to the Kansas Commission on Veterans' Affairs Office, which was created by the bill. It also authorizes the Director of the Office, in accordance with general policies directed by the Governor, to adopt, amend, or revoke any rules and regulations.

## Statutorily Required Rules and Regulations Not Heard by the JCARR as of July 1, 2019

Agency	Year	Bill Number			Session Law Chapter	Statute (2019 Supp.)	Topic
Aging and Disability Services	2018	Senate Sub. for Senate Sub. for	HB	2386	86	39-2009	Employee of a center, facility or hospital, no convictions for certain crimes, disqualification restored
Aging and Disability Services	2018	Senate Sub. for Senate Sub. for	HB	2386	86	65-5117	Employee of a home health agency, no convictions for certain crimes, disqualification restored
Aging and Disability Services	2018	Senate Sub. for Senate Sub. for	HB	2386	86	39-970	Convictions of adult care home workers - waiver of disqualification
Aging and Disability Services	2018	Senate Sub. for Senate Sub. for	HB	2386	86	39-970	Convictions of adult care home workers - implementation of criminal history record checks
Aging and Disability Services	2016		SB	449	105	39-2008	Fees for licensure of providers and facilities for individuals with mental illness or disability
Aging and Disability Services	2016		SB	449	105	39-2009	Appeal for disqualification from employment
Agriculture	2019	Senate Sub. for	HB	2167	37	2-3906	Commercial Industrial Hemp Program
Agriculture	2018		HB	2583	77	2-1314	Noxious weeds
Certain licensing agencies	2018	Senate Sub. for Senate Sub. for	HB	2386	86	74-120	Qualifications for licensure, certification, or registration - criminal history
Children and Families	2018	House Sub. for	SB	179	107	65-536	Juvenile crisis intervention centers
Children and Families	2015	Senate Sub. for	HB	2258	42	39-702	Temporary Assistance to Needy Families (TANF) eligibility
Children and Families	2013		HB	2015	124	23-3123	Distribution of child support
Corrections	2017	House Sub. for	SB	42	90	75-52,162	Database of juvenile offenders participating in an intermediate intervention program
Corrections	2016		SB	367	46	38-2397	Juvenile offenders, earned time calculations
Fire Marshal, State	2019		SB	128	27	31-133	Crisis drills
Healing Arts	2018	Senate Sub. for	HB	2028	98	40-2,216	Prescribing of drugs via telemedicine
Healing Arts	2016		HB	2615	92	65-28b07	Independent practice of midwifery
Healing Arts	2015	Senate Sub. for	HB	2225	46	65-2873b	Resident active license (physician)
Healing Arts	2015	Senate Sub. for	HB	2225	46	65-6836	Patient health care records, fees
Healing Arts	2015	Senate Sub. for	HB	2225	46	65-28a03	Exempt license (physician assistant)
Healing Arts	2014		HB	2673	131	65-2809	Reentry license (physician)
Healing Arts	2014		HB	2673	131	65-2809	Continuing education for exempt licensees (physician)
Health and Environment	2017	Senate Sub. for	HB	2026	60	39-709i	Medicaid external independent third-party review
Investigation, Bureau of	2019		HB	2248	66	50-6,110	Scrap metal database
Nursing	2017		HB	2118	35	65-1131	Advanced practice nursing, inactive license, continuing education for licensure

Pharmacy	2014	Senate Sub for	HB	2146	49	65-1645	License expiration dates for pharmacies, manufacturers, wholesalers, and other licensees
Pharmacy	2013		SB	199	114	65-1674	Utilization of Unused Medications Act - standards and procedures
Regents	2018		HB	2579	108	17-1312f	Tuition assistance for persons wrongfully convicted
Revenue	2018		HB	2606	53	8-240	Online driver's license renewal
Revenue	2017	Sub. for	HB	2277	85	41-2659	Common consumption areas for alcoholic beverages
Revenue	2014	Senate Sub for	HB	2693	106	8-2,133	Commercial driver's license testing by technical and community colleges
Revenue	2013	Senate Sub. for	HB	2011	81	8-1,170	Transfer of distinctive license plates
Revenue	2012		HB	2689	144	41-354	Importing spirits, spirits tasting programs
Secretary of State	2017		HB	2158	49	25-1132	Mail-in advance ballot procedures and deadlines
Secretary of State	2015		HB	2104	88	25-618	General election ballot style for municipalities
Secretary of State	2015		HB	2104	88	25-21a03	Ballot style and form for primary and general elections, declaration of intent (candidacy), municipal election procedures (Help Kansas Vote Act)
Secretary of State	2015		HB	2104	88	25-213	Ballot for municipal primary elections
Secretary of State	2015		HB	2104	88	25-610	Ballot for municipal general elections
Secretary of State	2015		HB	2104	88	25-611	Arrangement of names on municipal general election ballots
Secretary of State	2015		HB	2104	88	25-212	Arrangement of names on municipal primary election ballots
Water Resources, Agriculture	2015		SB	156	37	82a-745	Establishing water conservation areas
Water Resources, Agriculture	2013		HB	2363	111	82a-743	Limited term water right, transfer permit
Water Resources, Agriculture	2013		HB	2363	111	82a-302	Requirements for dams or other water obstruction
Water Resources, Agriculture	2012		SB	310	62	82a-1041	Local enhanced management area within a groundwater management district