

**JCARR**

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**Report on Oversight Activities of the**

**JOINT COMMITTEE ON**

**ADMINISTRATIVE RULES**

**AND REGULATIONS**

**July 2019—June 2020**

**Kansas Legislative Research Department  
August 2020**



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## INTRODUCTION

Since 1939 (L. 1939, Ch. 308), the Kansas statutes have provided for legislative oversight of agency 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 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 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 years 2010 and later but not included in this report are also available.

This volume contains a report for the current year, 2019-2020, plus reports for the previous five years:

- 2018-2019;
- 2017-2018;
- 2016-2017;
- 2015-2016; and
- 2014-2015.

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 2019 through June 2020

From July 2019 through June 2020, the Joint Committee on Administrative Rules and Regulations (JCARR) reviewed proposed rules and regulations of 27 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 Committee met six times. 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 2019 – June 2020</b>						
<b>Agency</b>	<b>August 6, 2019</b>	<b>October 8, 2019</b>	<b>November 20, 2019</b>	<b>January 10, 2020</b>	<b>March 3, 2020</b>	<b>May 19, 2020</b>
<b>Accountancy</b>	Examinations					
<b>Adult Care Home Administrators</b>			Updates <sup>1</sup>			
<b>Agriculture – Animal Health</b>	Movement of certain cats					
<b>Agriculture – Water Resources</b>	Groundwater management districts					
<b>Athletic Commission</b>	Bare-knuckle fighting					
<b>Attorney General</b>				Victim Information and Notification Everyday Advisory Board		
<b>Bank Commissioner</b>			Custody of investments			
<b>Dental Board</b>	Sedation; Definitions	Dental anesthesiology; Specialist examinations				
<b>Examiners in Fitting and Dispensing of Hearing Instruments</b>	Various					
<b>Emergency Medical Services</b>		Medication lists				
<b>Healing Arts</b>		Athletic training; Physical therapy	Midwifery		Business entity certification	
<b>Health and Environment (KDHE)</b>		Childcare incidents		Public Water Supply Loan Fund; Cosmetology facilities	Petroleum products storage tanks	
<b>Health and Environment and Aging and Disability Services</b>						Nursing facility assessment

<sup>1</sup> The proposed rules and regulations had not been adopted as of July 1, 2020.

<b>JCARR Meeting Dates, Agency Appearances, and Topics, July 2019 – June 2020</b>						
<b>Agency</b>	<b>August 6, 2019</b>	<b>October 8, 2019</b>	<b>November 20, 2019</b>	<b>January 10, 2020</b>	<b>March 3, 2020</b>	<b>May 19, 2020</b>
Health Care Finance, KDHE						Review of Medicaid payment denial <sup>1</sup>
Indigents' Defense Services			Attorney compensation			
KBI	Approved field tests					Scrap metal data repository <sup>1</sup>
Nursing		Intravenous fluid therapy			License reinstatement <sup>1</sup>	
Pharmacy		Various	Pharmacy technician			
Racing and Gaming			Concealed carry in casinos			
Real Estate Commission			Continuing education, various			
Regents					AO-K to Work program	
Revenue	Ignition interlock devices		Taxes on bullion and coins			
Revenue – Alcoholic Beverage Control	Label requirements for certain beer					
Secretary of State	Post-election audits					
Technical Professions		Fees				
Veterinary Examiners					Fees <sup>1</sup>	
Wildlife, Parks and Tourism	Furbearers; Fees; Electric-assisted bicycles	Fishing; Electronic Licenses; Threatened species; Electronic tags; Turkey seasons			Carcasses; Bow equipment; Deer unit boundaries; Hunting seasons	

## 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.

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.

<sup>1</sup> The proposed rules and regulations had not been adopted as of July 1, 2020.

## ***Authority***

Athletic Commission, Department of Commerce, bare-knuckle fighting, August 6, 2019. The Committee expressed its concern that the sport of professional bare-knuckle fighting was being authorized by the agency without prior legislative consideration and noted other regulated sports are listed in KSA 74-50,182. (The agency responded the statute authorizes professional boxing, which it defined as the sport of attack and defense which uses the fists and does not specify contestants must wear gloves. It stated that, because the statute provides an exemption from prohibition of contests both with and without gloves when conducted pursuant to the Act, the agency is authorized to regulate such sport both with and without gloves. It further stated having a separate regulation promotes the agency purpose of ensuring the safety of contest participants.)

Department of Revenue, breath alcohol ignition interlock devices (BAIID), August 6, 2019. The Committee expressed its concern with implementation of ignition interlock devices that capture images and questioned agency authority to expand the data collected without legislative input. (The agency referenced KSA 8-1016(a) and noted KSA 75-5156 requires the Director of Vehicles to report to the House Committee on Veterans and Military each year on the topic of driver's license information privacy. It stated the Director would raise the issue of ignition interlock device customer information privacy when the report was presented.)

Department of Wildlife, Parks and Tourism, endangered and threatened species, October 8, 2019. The Committee requested statutory citations related to authority to determine species on the endangered and threatened species lists and steps the agency and its commission take before proposing changes to the listings. (The agency provided a flow chart with statutory references.)

## ***Clarity***

Department of Health and Environment, child care, reporting critical incidents, October 8, 2019. The Committee suggested the agency consider defining the term "jeopardizes." (The agency provided information on the types of incidents in regulated facilities that might require notification of parents, national association guidance on describing those incidents, and the definition of the term. It also described training to be provided to local licensing surveyors and the regulated community on the types of incidents to be reported.)

Department of Health and Environment, child care, reporting critical incidents, October 8, 2019. The Committee asked the agency to consider defining the term "written report" and providing the form on paper. It also expressed concern about how licensees would meet a requirement the form be submitted by the next working day. (The agency responded the form is available both online and on paper from the agency or local license surveyor. It also clarified the rule and regulation does not place a burden on the licensee to ensure the agency receives the report by the next working day.)

Department of Health and Environment, child care, reporting critical incidents, October 8, 2019. The Committee asked the agency to consider defining the term "facility" with respect to the location at which critical incident reports must be kept. (The agency provided information on the applicable definitions in statute and regulations.)

Department of Health and Environment, petroleum products storage tanks, March 3, 2020. The Committee noted the proposed rules and regulations required communications to be



“in writing” but did not define the term; it asked whether electronic communications were included and suggested the agency define the term. (The agency reported it had discussed the types of communications with Office of the Attorney General staff so that communication between the agency and licensee was documented. It stated communications use both paper and email and that the definition of “in writing” could be addressed in policy guidance materials including the Owner/Operator Guidance Manual being developed.)

### ***Compliments***

Department of Wildlife, Parks and Tourism, various, August 6, 2019. The Committee expressed its appreciation for the agency’s elimination of the backcountry access pass and its associated fee, which will expand public access to Little Jerusalem Badlands State Park.

Kansas Dental Board, sedation, August 6, 2019. The Committee expressed its appreciation for the Board’s attention to this public safety issue.

Department of Health and Environment, public water supply loan fund, January 10, 2020. The Committee complimented the agency on its thorough economic impact statement submitted for this set of rules and regulations.

### ***Costs or Economic Impact***

Department of Revenue, BAIDs, August 6, 2019. The Committee noted rules and regulations require each BAID to be installed at the driver’s expense and asked how the agency would assure no drivers would be charged for replacement devices. (The agency stated it had received assurances from the BAID industry that the customer would not be reassessed equipment installation fees based on the addition of requirements for image capture. The agency also stated, however, that some of the manufacturers may charge another installation fee to recover costs for the upgraded equipment because monthly recalibration fees are set in contract with the customer.)

State Board of Pharmacy, pharmacy ceasing business, October 8, 2019. The Committee expressed its concern that the economic impact statement did not include an estimate of the costs to pharmacies to notify their customers and asked the agency to consider issuing a new economic impact statement. (The agency provided a revised economic impact statement and changes to the proposed rule and regulation to authorize additional methods for patient notification, to include U.S. mail, email, text message, or phone call.)

State Board of Pharmacy, economic impact, October 8, 2019. The Committee requested information on moneys moved to the State General Fund (SGF) that had been fees paid to the agency. (The agency provided information on a cash balance at the end of fiscal year 2014, subsequent fee reductions in 2014, a transfer of \$800,000 to the SGF in 2015, legislative requirements to use agency moneys to cover costs associated with tracking of prescriptions for controlled substances, and fee increases in 2019 to prevent fund imbalance.)

State Board of Indigents’ Defense Services, attorney reimbursement rates, November 20, 2019. The Committee commented it understood budget constraints had led to reimbursement rates for attorneys that are significantly less than market rates and it recognized the implications of those budget constraints on Kansans accused of crimes and the state as a whole. (The agency stated it shares those concerns, but the proposed increase was a step toward better funding for assigned counsel.)

Department of Health and Environment, petroleum products storage tanks, March 3, 2020. The Committee requested information about funding for this portion of the agency and information to justify raising fees. (The agency provided balances for funds used in this program and noted statutory restrictions on revenues into those funds and uses of the moneys. It stated state moneys match federal funds for uses including installer certification, standards for manufacturers, inspections, and operator training.)

### ***Data Privacy***

Department of Revenue, BAIDs, August 6, 2019. The Committee expressed its concern with the privacy of certain data and images received by BAID vendors and manufacturers and requested information on how those data are transferred. It also asked how the agency monitors lawful use of the data collected and urged data protection rules and regulations. (The agency stated customer performance information is communicated to the BAID manufacturer during each monthly calibration. It noted KAR 92-56-2 requires a manufacturer to cooperate with the Director of Vehicles, a court, or a law enforcement agency. It stated the agency shared concerns about protecting customer images and would start by reviewing existing agreements with BAID manufacturers for prohibitions on disclosing personal information to third parties.)

State Board of Pharmacy, sharing information, October 8, 2019. The Committee requested information on agency procedures, contractual provisions, and other processes and policies designed to protect the privacy of pharmacy records. (The agency provided information on such provisions for maintaining confidentiality of records of prescriptions for controlled substances and drugs of concern. The agency noted confidentiality agreements, contractual obligations to meet confidentiality requirements in state and federal law, authentication required for access to accounts, and additional measures taken to assure access is restricted only to appropriate parties.)

### ***Information Requests***

Secretary of State, post-election audits, August 6, 2019. The Committee requested additional information regarding promulgation of rules and regulations related to 2019 Sub. for SB 130, allowing all voters in a county to vote at any polling place on election day, at the discretion of the county election official. (The agency responded it had formed a working group of Kansas election officers, county clerks, election experts, and security specialists to assist in the drafting of the rules and regulations.)

Division of Animal Health, Department of Agriculture, transferring certain cats, August 6, 2019. The Committee requested additional information about the reasons to allow cats that have tested positive for feline immunodeficiency virus (FIV) to be adopted or permanently relocated. (The agency responded there had been an extensive review of research on the topic and consultation with Kansas State University College of Veterinary Medicine disease specialists. The agency stated research has found FIV asymptomatic cats are not likely to transmit the disease, especially in the absence of a deep bite wound.)

Athletic Commission, Department of Commerce, bare-knuckle fighting, August 6, 2019. The Committee requested citations for literature the agency relied upon when considering regulation of bare-knuckle fighting, particularly literature related to injuries associated with the sport. (The agency provided a copy of the article "The True Force of a Boxer's Punch" and provided information from industry sources on the pounds of force elite fighters produce with and without gloves.)

State Board of Pharmacy, wholesale distributors, October 8, 2019. The Committee requested information related to the agency's inspection or testing of drugs imported into the United States. (The agency stated it does not have authority to inspect any facilities not registered with the agency and did not have any foreign facility registrants. It further stated it had not received any complaints or concerns regarding the potency or composition of any prescription drugs sold in Kansas, and that Kansas facilities are inspected at least once every three years and most pharmacies every 18 months. It noted it had adopted regulations aligning state standards with those of the federal Drug Supply Chain Security Act [21 USC 351 *et seq.*].)

Department of Wildlife, Parks and Tourism, turkey hunting, October 8, 2019. The Committee requested information on data the agency relied upon when closing the season in certain areas of the state. It also requested information on numbers of licenses issued to in-state and out-of-state turkey hunters. (The agency provided a map of state hunting units, information provided to its commission before the commission adopted the changes, graphs showing turkey numbers in the various units over several years, and the numbers of hunters and permits or game tags sold since 2014.)

Board of Adult Care Home Administrators, initial licensure of a nursing home administrator, November 20, 2019. The Committee asked the agency to provide its requirements specific to a person who is the administrator of record at multiple facilities. (The agency stated the requirements are in KAR 26-39-101(i) and KAR 8-39-163(a)(4) and provided the language of those rules and regulations.)

Board of Adult Care Home Administrators, initial licensure of a nursing home administrator, November 20, 2019. The Committee requested information on the number of licensed adult care home administrators and the number of adult care homes, by year. (For years 2015 through 2019, the agency provided the number of skilled nursing facilities, assisted living facilities licensed for 60 or more beds, residential health care facilities licensed for 60 or more beds, the total number of facilities requiring a licensed administrator, and the total number of licensed adult care home administrators. For all years, the number of licensed administrators exceeded the total number of licensed facilities.)

State Board of Pharmacy, pharmacy technicians, November 20, 2019. The Committee requested information on what tasks a pharmacy technician may perform in Kansas and on a report with information about pharmacy technician tasks in other states. (The agency provided a list of tasks a pharmacy technician may perform and described training requirements and oversight required by pharmacists. It provided summary information from the National Association of Boards of Pharmacy on tasks pharmacy technicians in other states may perform.)

State Board of Regents, AO-K to Work program, March 3, 2020. The Committee requested additional information about fees for materials, including fee waivers by the institutions. (The agency noted the rule and regulation requires a \$25 fee for a high school equivalency credential. It described a materials fee to be paid to an adult education center, an average of \$30 and set at the local level. It stated 366 Kansans obtained career readiness certificates in FY 2019 and the local programs decide whether to waive the fee; if 35 percent of those fees were waived, \$3,843 in fees was waived.)

State Board of Regents, AO-K to Work program, March 3, 2020. The Committee requested information about the process used to determine which institutions are included in the approved credentials and pathways list dated August 30, 2019, and which institutions were in the process of applying or declined to participate. (The agency stated 20 of Kansas' 26

community and technical colleges were participating and listed those that were not then participating. It stated institutions may join the initiative at any time.)

State Board of Regents, AO-K to Work program, March 3, 2020. The Committee requested additional information about the competency levels associated with the ACT National Career Readiness Certificate (NCRC), including the employer competency percentage associated with each level of certificate achievement. (The agency provided additional information on the NCRC and the skills associated with each level. It noted a Kansas student must achieve a level that indicates readiness for 65 percent of profiled jobs to receive a high school equivalency credential under this program.)

Department of Wildlife, Parks and Tourism, sale of antlers, March 3, 2020. The Committee requested a legal analysis of the statutory authority for the Secretary of Wildlife, Parks and Tourism to conduct an auction on January 2, 2020, involving a set of antlers from a buck shot by a poacher in Osage County in 2011. (The agency provided such an analysis and stated the antlers were sold at a negotiated price between two potential buyers. It reviewed rules specific to the agency regarding disposal of seized wildlife parts and firearms.)

Division of Health Care Finance, Department of Health and Environment, external independent third-party review for providers, May 19, 2020. The Committee requested information on the process by which the Kansas Foundation for Medical Care was selected as the contractor for third-party review of denied Medicaid claims. (The agency provided a description of the process, with dates. It noted three vendors submitted technical and cost proposals that were reviewed by staff of the two agencies [Department of Health and Environment and the Kansas Department for Aging and Disability Services] and then by additional officials, negotiations with two of the vendors, and selection.)

Division of Health Care Finance, Department of Health and Environment, external independent third-party review for providers, May 19, 2020. The Committee requested information on the number of external review requests the agency had received, their dates, and the number of cases for which external review had been granted. (The agency provided a table with information on each of the 17 requests for external review it had received. Most were denied because the adverse decision had been made before January 1, 2020. Three were approved.)

### ***Legislative Action***

State Board of Healing Arts and Board of Nursing, midwifery, November 20, 2019. The Committee requested the agencies review statutes on this topic and request changes to clarify language or place policy positions into statute. (The Board of Healing Arts responded it would consider the issue and determine whether and which specific recommendations could be made in its role as a licensing agency. The Board of Nursing responded the issue would be put on the agenda for an upcoming meeting.)

Kansas Bureau of Investigation, scrap metal dealer data, May 19, 2020. The Committee suggested the Legislature review KSA 50-6,111 as amended by 2019 HB 2248, which requires these rules and regulations, and provide clarifications as needed.

## ***Program Concerns***

Secretary of State, post-election audits, August 6, 2019. The Committee expressed its concern that procedures to randomly choose election races and precincts for audits might not be uniform across counties and suggested the rules and regulations specify how counties should establish randomization procedure criteria. (The agency responded that its audit implementation group, which included representatives of counties with various population sizes, voting equipment, and political affiliations, had examined that idea and noted the statute does not require the state mandate a specific method.)

Secretary of State, post-election audits, August 6, 2019. The Committee suggested, if procedures for randomization were not made uniform across the state, that the agency clarify who determines the procedure to randomize the selection of races and precincts to be audited. (The agency replied the question is answered in KAR 7-47-1(c)(2) and (3) which identifies when the Secretary of State makes the random selection and when the county election officer makes the selection. The agency stated the wording of KAR 7-47-1(c) was developed by Department of Administration, Office of the Attorney General, and Secretary of State attorneys.)

Board of Examiners in Fitting and Dispensing of Hearing Instruments, licensing, August 6, 2019. The Committee expressed its concern that consideration of only those felonies related to the fitting and dispensing of hearing instruments may fail to potentially disqualify applicants who have been convicted of felonies related to protecting the general welfare and the duties and responsibilities of licensed persons as provided in KSA 74-120(b)(1). (The agency responded that KSA 74-5818(a) requires the agency to limit its consideration to convictions for felonies and misdemeanors related to the practice of fitting and dispensing hearing instruments.)

Department of Health and Environment, child care, reporting critical incidents, October 8, 2019. The Committee expressed its concern that some childcare providers may not have access to email or the Internet and asked the agency to consider providing notification of regulatory changes *via* U.S. Postal Service if the provider so requests. (The agency responded it communicates with the regulated community based on the licensee's preferred method, either email or postal mail, and provides the information also on its website, at meetings and webinars, at professional development events, and through partnerships with various associations.)

Board of Adult Care Home Administrators, initial licensure of a nursing home administrator, November 20, 2019. The Committee asked the agency to explain why a baccalaureate or post-baccalaureate degree is required for initial licensure and how many other states have similar requirements. (The agency stated that a degree had been required since 1990, because the agency found applicants with degrees were much more likely to pass the national examination, and 35 states require at least a baccalaureate degree.)

Board of Adult Care Home Administrators, initial licensure of a nursing home administrator, November 20, 2019. The Committee asked the agency to clarify whether an applicant for licensure by reciprocity must have a baccalaureate or post-baccalaureate degree and to provide information on what is meant by "substantially equivalent." (The agency stated licensure by reciprocity may be achieved by either licensed experience or education and training and the agency does not further define the term in the rules and regulations as it allows the board to consider all aspects of an applicant's education, training, and experience.)

Department of Health and Environment, sanitary regulations for the practice of cosmetology, nail technology, electrology, or esthetics, January 10, 2020. The Committee requested information on changes to physical facilities that could be required by the changes to

the rules and regulations and whether existing facilities would be allowed to continue to meet previous requirements. (The agency stated it believed all facilities were already in compliance with the proposed regulations regarding facilities and equipment in those facilities.)

Department of Health and Environment, petroleum products storage tanks, March 3, 2020. The Committee expressed its concern that seven days could be insufficient time to complete and submit a registration form. (The agency responded that this timeline applies only to existing systems and that registration for a new system is to be submitted within 30 days. It provided reasons why properly registering such a system is important and noted the primary industry trade association had approved the seven-day deadline.)

Division of Health Care Finance, Department of Health and Environment, external independent third-party review for providers, May 19, 2020. The Committee expressed its concerns with retroactivity in this rule and regulation and questioned whether the rule and regulation reflects legislative intent. It noted the rule and regulation was not effective by January 1, 2020, but applied to claims denied after January 1, 2020. The Committee requested review of KSA 39-709i by the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services in light of this concern. (The agency provided a ten-page legal analysis of the statutes involved and how state and federal courts had addressed potential retroactivity, finding rules and regulations can have retroactive effect.)

### ***Rule and Regulation Process***

State Board of Healing Arts, midwifery, October 8, 2019. The Committee requested a representative of the Board of Nursing accompany a representative of this agency when rules and regulations on this topic are presented. (Both agencies responded that they expected to be present when subsequent midwifery rules and regulations are presented.)

State Board of Healing Arts, athletic training, October 8, 2019. The Committee noted a page of a proposed rule and regulation had not been published on the Secretary of State's website. It requested information on the timeline for the rule and regulation process and whether the proposed regulation was in compliance with the Rules and Regulations Filing Act. (The agency provided a timeline of steps in the development and notice of the proposed rule and regulation and stated the process met the requirements of the Act. It noted no comments were received on the proposed rule and regulation.)

State Board of Healing Arts, midwifery, November 20, 2019. The Committee suggested that a version of a rule and regulation on the midwifery scope of practice be adopted and later modified after consensus is reached between the Board of Healing Arts and the Board of Nursing. (The Board of Healing Arts responded it was not confident the law authorizing the rules and regulations would permit adoption of a rule and regulation on this topic that had not been agreed upon by both agencies. It stated concurrence from the Board of Nursing had been withdrawn and it did not plan to adopt the presented rule and regulation. The Board of Nursing stated it would work with its board and contact the Board of Healing Arts.)

State Board of Healing Arts and Board of Nursing, midwifery, November 20, 2019. The Committee noted KSA 65-28b07 required rules and regulations on this topic be adopted by January 1, 2017, and it urged continued cooperation between the boards. (The agencies stated they would continue to work on this issue.)

Division of Health Care Finance, Department of Health and Environment, external independent third-party review for providers, May 19, 2020. The Committee asked why this rule and regulation was being promulgated after the January 1, 2020, statutory deadline effective July 1, 2017. (The agency stated it had had to address major changes in federal rules for Medicaid managed care and incorporate those changes into the rule and regulation in addition to managing major projects on other aspects of KanCare. The response stated the agency had included a draft of this rule and regulation in a larger package regarding appeals and hearing steps, but that draft was pulled in early 2019 upon consultation with leadership and staff. It described work with the Department of Administration in May and June 2019 and Division of the Budget approval in November 2019 before disapproval by the Office of the Attorney General in December 2019, further edits, and a subsequent round of approvals.)

## **Legislative Action**

Of the 13 bills enacted in 2020, 2 contained provisions authorizing, requiring, moving, or clarifying authority for state agency rules and regulations; the only bill enacted during the 2020 Special Session also contained provisions regarding rules and regulations. The following list summarizes those statutory changes plus a change in responsibility directed by the Governor using an executive reorganization order (ERO). 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 2020 *Summary of Legislation*, available from the Kansas Legislative Research Department's website. A table listing statutes enacted in 2014 through 2020 that require rules and regulations but that had not been heard by the JCARR before July 1, 2020, is included at the end of this report.

## ***Department of Administration***

**ERO 45** transfers the powers, duties, and functions of the State Employee Health Plan and the State Self Insurance Fund from KDHE to the Department of Administration, in a Division of the State Employee Health Benefits Plan created by the ERO. The ERO states all rules and regulations of the KDHE Division of Health Care Finance that relate to functions transferred by this order shall continue to be effective and deemed to be rules and regulations of the Secretary of Administration until revised, amended, repealed, or nullified pursuant to law. (Rules and regulations initially promulgated by the State Employees Health Care Commission, KAR 108-1-1 *et seq.*, appear to be so transferred.)

## ***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 Office of the Attorney General on those proposed rules and regulations. However, **SB 66**, Section 48, 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.

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

**SB 66**, in Sections 71 and 72, prohibits the Department of Health and Environment from amending or modifying any rule and regulation adopted pursuant to the Kansas Air Quality Act or KSA 65-3022, if the change would increase any fee in rules and regulations as of July 1, 2020, or would adopt, create, or impose any new fee. The bill declares any new such fees to be null and void. The bill requires KDHE to work with affected stakeholders to develop a fee schedule for the purpose of proposing such fee schedule in legislation during the 2021 Session.

**SB 66**, in Section 160, requires the Secretary of Health and Environment to adopt rules and regulations establishing standards for determining eligibility for state assistance for covering costs for diagnosed cases of maple syrup urine disease. The bill requires needs to be covered under the Medicaid state plan for those who are financially eligible for Medicaid; reimbursement of between 50 percent and 100 percent of product costs if the applicable income of the person or persons legally responsible for the diagnosed individual is not more than 300 percent of the federal poverty level established under the most recent poverty guidelines issued by the U.S. Department of Health and Human Services; and reimbursement of not more than 50 percent of product costs if the income of the legally responsible person or persons exceeds 300 percent of the federal poverty level.

**SB 66**, in Section 172, authorizes the Secretary of Health and Environment to adopt rules and regulations to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the Core Uniform Panel of Newborn Screening Conditions recommended in the 2005 report “Newborn Screening: Toward a Uniform Screening Panel and System” by the American College of Medical Genetics or another report the agency determines will provide more appropriate newborn screening guidelines to protect the health and welfare of newborns with treatable disorders. The Secretary of Health and Environment is required to appoint a council to advise the agency on screening tests.

**Special Session HB 2016**, in Section 16, requires the Secretary of Health and Environment to promulgate rules and regulations by August 1, 2020, to administer and enforce provisions of the COVID-19 Contact Tracing Privacy Act. The rules and regulations are to prescribe qualifications and training for contact tracers. The provisions of this section expire May 1, 2021.

### ***Transportation, Department of***

**House Sub. for SB 173**, in Section 6, authorizes the Secretary of Transportation to adopt rules and regulations establishing criteria for qualification for a grant under and implementing a new Driver’s Education Scholarship Grant Program. The Program will sunset June 30, 2023.



# 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 child care workers; Timing of screenings of newborns; Cancer registry	Fees, radiation control			Immunizations; PCB facilities (revocations) <sup>(2)</sup>
<b>KDHE – Mined Land Conservation and Reclamation</b>	Surface mining				
<b>Human Rights</b>	Proceedings				

<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>
	(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 of Health and Environment 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.
- Kansas 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 of Wildlife, Parks and Tourism 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. (The agency noted it had received the Committee's request.)
- 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. (The agency provided the requested report at the August 6, 2019, meeting.)
- 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.)
- Office of the 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 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 agency 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. (The corresponding rules and regulations were heard at the January 10, 2020, 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 Office of the Attorney General 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 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. (The corresponding rules and regulations were heard at the March 3, 2020, meeting.)

### ***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 ERO 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. (The corresponding rules and regulations were heard at the May 19, 2020, meeting.)

### ***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.] (The corresponding rules and regulations were heard at the November 20, 2019, meeting.)

### ***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. (The corresponding rules and regulations were heard at the March 3, 2020, meeting.)

### ***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 of Air 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.)
- Kansas 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 of Veterinary Examiners 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 Human Rights 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 of Emergency Medical Services (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 of Pharmacy 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.

## 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. Corresponding rules and regulations of the Board of Examiners in Fitting and Dispensing of Hearing Instruments were heard at the August 6, 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 (Secretary) 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 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 Department of Agriculture, 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 Department. The bill requires the Department to promulgate rules and regulations by December 31, 2018, to carry out the provisions of the Act. The rules and regulations of the Department 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. The corresponding rules and regulations were heard at the August 6, 2019, meeting.)

# 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.

JCARR Meeting Dates, Agency Appearances, and Topics, July 2016 - June 2017							
Agency	Sept. 6, 2016	Nov. 16, 2016	Jan. 3, 2017	March 6 & 7, 2017	April 5, 2017	May 16 & 31, 2017	June 26, 2017
Administration	Leave, reviews, layoffs						
Administrative Hearings		Hearing procedures					
Agriculture – Animal Health			Cervid brucellosis	Pet Animal Act* (later withdrawn)			Pet Animal Act*; Auctions*
Agriculture - Veterinary Examiners			Fees				
Agriculture – Water Resources	Well spacing, water meters				Civil penalties		Uses of water*
Athletic Commission			Mixed martial arts				
Attorney General	Scrap metal dealers; Bail agents	School officer training; Court debt collection					
Barbering	Licensing; training						
Behavioral Sciences	Applied behavior analysis					Supervisor education*	
Children and Families							Foster care licensing*
Corporation Commission			Renewable energy				
Corrections	Fighting						
Corrections (Juvenile)				Community-based gradual responses			
Cosmetology	License fees; Access to tanning devices						
Education	Suicide prevention				Emergency safety interventions; Teacher preparation; School bus transportation		
Emergency Medical Services				Scope of practice	Ambulance equipment*		

JCARR Meeting Dates, Agency Appearances, and Topics, July 2016 - June 2017							
Agency	Sept. 6, 2016	Nov. 16, 2016	Jan. 3, 2017	March 6 & 7, 2017	April 5, 2017	May 16 & 31, 2017	June 26, 2017
Examiners in Fitting and Dispensing of Hearing Instruments		Examinations, fees					
Healing Arts			Dry needling				
Health and Environment (KDHE)	Air quality	Day care homes and centers				Trauma centers*; Voluntary cleanup of contamination*	
Indigents' Defense	Attorney compensation						
Insurance				External review; reporting*; Risk-based capital instructions*		Workers compensation exemption affidavit*	Medicare supplement policies*
Labor (Workers Compensation)		Fees for medical services					
Nursing				Fees for verification of license			
Pharmacy							Emergency opioid antagonist protocols*
Real Estate Appraisal				Coursework, experience, supervision			
Real Estate Commission	Clarify relationships	Fees			Rebates		
Regents	State university admissions			Military admissions; GED scores; Private and out-of-state institutions			
Revenue			Consumable materials tax (electronic cigarettes)				
Wildlife, Parks and Tourism	Vehicle permits; Bait fish; Wild turkey hunting			Possession of game; Big-game seasons; Public lands special use restrictions		Nuisance birds; Deer hunting*	
<p>* Rules and regulations in this set were NOT published in the <i>Kansas Register</i> as final rules and regulations before July 1, 2017.</p> <p>(1) Includes a May 12, 2016, meeting at which only Emergency Medical Services proposed rules and regulations were heard.</p> <p>(2) Three of the four proposed rules and regulations were withdrawn.</p>							



## **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 Office of the Attorney General to discuss the issue. (In its response, the agency stated the Office of the Attorney General 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 \$51.0 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 \$1.0 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. (The corresponding rules and regulations were heard at the March 3, 2020, meeting.)

### ***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.

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

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



## 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 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**

- Department of Agriculture, Division of Water Resources, 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.)
- Department of 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.
- Department of 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 of Emergency Medical Services for simplifying ambulance types and its efforts to enable ambulance coverage throughout the state.
- Board of 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.
- Board of 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***

- Department of 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.)
- Department for 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 of Emergency Medical Services was revisiting the proposals; different versions were presented at the Committee's March 22, 2016, meeting.)
- Department of 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***

- Department of 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.)
- Department of 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.)
- Board of 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.)
- Board of 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 Commission, 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.

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

**JCARR Meeting Dates, Agency Appearances, and Topics, July 2014 - June 2015**

<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>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	



## **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***

- Department of Health and Environment, 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***

- Department of 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.)
- Kansas 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***

- Board of 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***

- Office of the State 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.)
- Department of 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***

- Department of 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.)
- Kansas 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.)
- Department of Health and Environment 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.)
- Department of Health and Environment, 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 Kansas 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, State***

**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.

**ERO 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.

**Statutorily Required Rules and Regulations Not Heard by the JCARR as of July 1, 2020**

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	02/01/06	Commercial Industrial Hemp Program
Agriculture	2018		HB	2583	77	02/01/14	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
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



**Statutorily Required Rules and Regulations Not Heard by the JCARR as of July 1, 2020**

Agency	Year	Bill Number			Session Law Chapter	Statute (2019 Supp.)	Topic
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
Health and Environment	2020		SB	66	5	n/a	Eligibility for state assistance for costs associated with maple syrup urine disease
Health and Environment	2020	Special Session	HB	2016	1	n/a	COVID-19 contact tracing
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
Regents	2018		HB	2579	108	17-1312f	Tuition assistance for persons wrongfully convicted
Revenue	2018		HB	2606	53	08/01/40	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
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

**Statutorily Required Rules and Regulations Not Heard by the JCARR as of July 1, 2020**

Agency	Year	Bill Number			Session Law Chapter	Statute (2019 Supp.)	Topic
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

n/a - not available when this report was published