

November 29, 2018

UPDATED REPORT

To: Kansas Legislature

From: Joint Committee on Administrative Rules and Regulations

Re: Report on the October 3, 2018, Meeting of the Joint Committee on Administrative Rules and Regulations

At its meeting on October 3, 2018, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the following.

Kansas Department of Health and Environment

*Division of Public Health
Bureau of Health Promotion*

KAR 28-70-2, reporting requirements (cancer registry).

After discussion, the Committee reported no comments.

*Division of Public Health
Bureau of Family Health*

KAR 28-4-95, fee for fingerprint-based background checks.

After discussion, the Committee reported the following comment.

Request. The Committee requests the citation of statutory authority for the agency to require a fee for the costs of background checks when KSA 2018 Supp. 65-516 authorizes the agency to “fix a fee for fingerprinting” certain persons. According to testimony, the actual fingerprinting is performed by specific police and sheriff departments, some of which charge a fee.

KAR 28-4-503, timing of specimen collections (newborn screening).

After discussion, the Committee reported no comments.

*Division of Environment
Bureau of Environmental Remediation
Surface Mining Section*

KAR 47-2-75, definitions, adoption by reference; **KAR 47-3-1**, application for mining permit; **KAR 47-3-2**, application for mining permit, adoption by reference; **KAR 47-3-42**, application for

mining permit, adoption by reference; KAR 47-5-5a, civil penalties, adoption by reference; KAR 47-6-1, permit review; KAR 47-6-2, permit revision; KAR 47-6-3, permit renewals, adoption by reference; KAR 47-6-4, permit transfers, assignments, and sales, adoption by reference; KAR 47-6-6, permit conditions, adoption by reference; KAR 47-6-8, termination of jurisdiction, adoption by reference; KAR 47-6-9, exemption for coal extraction incidental to government-financed highway or other construction, adoption by reference; KAR 47-6-10, exemption for coal extraction incidental to the extraction of other minerals, adoption by reference; KAR 47-6-11, post-permit issuance requirements, adoption by reference; KAR 47-7-2, coal exploration, adoption by reference; KAR 47-8-9, bonding procedures, adoption by reference; KAR 47-9-1, adoption by reference; KAR 47-9-4, interim performance standards, adoption by reference; KAR 47-10-1, adoption by reference, underground mining; KAR 47-11-8, small operator assistance program, adoption by reference; KAR 47-12-4, lands unsuitable for surface mining, adoption by reference; KAR 47-13-4, training and certification of blasters, adoption by reference; KAR 47-14-7, employee financial interest, adoption by reference; KAR 47-15-1a, inspection and enforcement, adoption by reference; KAR 47-16-6, liens; KAR 47-16-9, contractor responsibility; KAR 47-16-10, exclusion of certain noncoal reclamation sites; KAR 47-16-12, surface mining section's procedures for reclamation projects receiving less than 50 percent government funding; KAR 47-16-13, reclamation of non-coal mined lands and associated waters.

After discussion, the Committee reported no comments.

Kansas Human Rights Commission

KAR 21-30-18, revocation (was affirmative action file); KAR 21-40-5, revocation (was exercise of executive functions); KAR 21-45-1 through KAR 21-45-18, revocations; KAR 21-45-21 through KAR 21-45-25, revocations (*Note*: These revocations encompass all of Article 45 proceedings; KAR 21-45-19 and KAR 21-24-20 were revoked in 1975.); KAR 21-46-2, revocation (was nonprofit fraternal or social associations or corporations); KAR 21-46-3, revocation (was student admissions to schools).

After discussion, the Committee reported no comments.

Kansas Department of Labor

KAR 51-1-1, revocation (was forms); KAR 51-1-26, submissions, electronic filing (E-filing) system; KAR 51-17-2, methods of filing, service.

After discussion, the Committee reported the following comment.

Request. The Committee asks the agency to report to the Committee on implementation of the workers compensation E-filing system after that system becomes operational.

Board of Pharmacy

KAR 68-13-1, revocation; KAR 68-7-10, pharmacy-based drug distribution systems in long-term care facilities, emergency medication kits; KAR 68-9-2, automated drug delivery systems in pharmacies; KAR 68-9-3, automated drug delivery system to supply drugs for administration in certain facilities; KAR 68-2-23, notification to board, disciplinary action; KAR 68-7-25,

notification to board, pharmacist, pharmacy technician, or pharmacy intern; KAR 68-20-15b, notification to board, suspected diversion, theft, or loss of controlled substances.

After discussion, the Committee reported the following comments.

Request. The Committee asks the agency to provide additional information regarding how other states handle disciplinary actions taken against similar licensees and whether other states require licensees to report pending disciplinary actions in outside jurisdictions.

KAR 68-7-25. The Committee is concerned that a licensee could be charged with a felony but would not be required to report that charge until convicted, based on the provisions of subsection (b) of the rule and regulation. The Committee asks the agency to provide additional information regarding whether other states require licensees to report felony charges before disposition of the case for disposition of legal proceedings before initiating an investigation.

Real Estate Appraisal Board

KAR 117-2-1, licensed classification, education requirements; **KAR 117-2-2**, licensed classification, appraisal experience requirement; **KAR 117-3-2**, general classification, appraisal experience requirement; **KAR 117-4-1**, residential classification, education requirements; **KAR 117-4-2**, residential classification, appraisal experience requirement; **KAR 117-5-1**, provisional classification, education requirements.

After discussion, the Committee reported the following comments.

Request. The Committee asks the agency to coordinate with the Legislature to hold informational hearings during the 2019 Legislative Session on the topic of the profession of real estate appraisers in Kansas and barriers and incentives to licensure.

Comment. The Committee commends Cheryl Magathan, Public Service Executive, for her contributions to the Real Estate Appraisal Board and her dedicated service to the State of Kansas.

Real Estate Commission

KAR 86-1-3, expiration of licenses; **KAR 86-1-5**, fees; **KAR 86-1-15**, revocation (was change of last name); **KAR 86-1-19**, submission of supporting documentation with application; **KAR 86-3-15**, reporting of information.

After discussion, the Committee reported the following comments.

KAR 86-1-19 and 86-3-15. The Committee is concerned that a licensee could be the subject of a civil lawsuit, but would not be investigated by the agency until the lawsuit has reached a final disposition since the agency only requires licensees to self-report final judgments.

Request. The Committee asks the agency to provide additional information regarding how other states handle complaints about similar licensees and whether other states wait for disposition of legal proceedings before initiating an investigation.

Kansas Department of Wildlife, Parks and Tourism

KAR 115-2-3, camping, utility, and other fees; KAR 115-2-5, revocation (was trail access pass, requirement, fees, exceptions, and general provisions); KAR 115-7-3, fish, taking and use of baitfish or minnows; KAR 115-17-2, commercial sale of fish bait; KAR 115-18-10, importation and possession of certain wildlife, prohibition, permit requirement, and restrictions.

After discussion, the Committee reported the following comment.

Request. The Committee asks the agency to provide additional information regarding electricity rates for long-term recreational vehicle camp sites, including examples of actual electricity costs per site and examples of electricity rate trends.

AGENCY EXPECTATIONS

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

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

To assist in that final review, agencies are expected to inform the Committee and Raney L. Gilliland, Director of Legislative Research, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes that have been made following the public hearing. Agencies are expected to notify the Committee and Mr. Gilliland, in writing, when the agency has adopted the regulations as permanent, delayed implementation of the regulations, or decided not to adopt any of the regulations. Agencies are expected to indicate separately to the Committee and Mr. Gilliland any changes made to the proposed regulations reviewed by the Committee.

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