

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 5, 2009  
Room 535-N—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-Chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative John Faber  
Representative Steve Huebert  
Representative Shirley Palmer  
Representative Joe Patton  
Representative Ed Trimmer

#### Members Absent

Representative Jan Pauls

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Kenneth Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Others Present

Jeff Barnes, Kansas Home Inspectors Registration Board  
Julia Mowers, Kansas State Board of Healing Arts  
Randy Forbes, Kansas Pharmacy Board  
Debra Billingsley, Kansas Pharmacy Board  
Julene Miller, Kansas Board of Regents  
John Wine, Kansas Insurance Department  
Dick Cook, Kansas Insurance Department

Jean Redeker, Kansas Board of Regents  
Gary Alexander, Kansas Board of Regents  
Kip Peterson, Kansas Board of Regents  
Mark Boranyak, Capitol Strategies  
Tom Day, Kansas Corporation Commission  
Randy Stookey, Kansas Department of Agriculture  
C.V. Cotsoradis, Kansas Department of Agriculture  
Dan Tuggle, Kansas Department of Agriculture  
Katie Howard, Kansas Department of Agriculture  
Gary Meyer, Kansas Department of Agriculture  
Martin Hawver, Hawver's Capitol Report  
Ron Seeber, Kansas Agribusiness Retailers Association  
Christine Mennicke, Kansas Department of Health and Environment  
Elizabeth Saadi, Ph.D., Kansas Department of Health and Environment  
Thomas Gross, Kansas Department of Health and Environment  
Tom Langer, Kansas Department of Health and Environment  
Martha Cooper, Kansas Department of Health and Environment  
Darren E. Root, Kansas Employment Security Board of Review  
Tom Reiling, Kansas Employment Security Board of Review  
Carman Allen, Kansas Board of Emergency Medical Services

Chairperson Holmes called the meeting to order at 9:00 a.m. Chairperson Holmes welcomed Jeff Barnes to speak to the proposed rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-1-1, registration; KAR 130-1-4, registration expiration, renewal; KAR 130-1-5, reinstatement of registration; KAR 130-2-1, fees; KAR 130-3-1, approval of educational providers; KAR 130-5-1, standards for approval of continuing education courses; and KAR 130-5-2, approval of continuing education providers.

Mr. Barnes noted that in KAR 130-1-1(j)(2), the language will be deleted. He stated that KAR 130-1-4 is the result of HB 2316. In KAR 130-1-4, there should be a period after "effect" with the rest of the paragraph being deleted. In KAR 130-5-1, paragraphs (c), (4), (B), and (C) are to be deleted and subsections (a), (c), and (d) in KAR 130-5-2 are deleted. These changes will be effectuated at the public hearing.

A Committee member noted that in KAR 130-2-1, there is a technical error in the lettering of the list of items with multiple sections labeled "(e)." Mr. Barnes responded to questions from the Committee concerning how the fees were determined by the Board. Mr. Barnes stated that the members of the Board would look at the fees at the end of two years to determine whether the fees need adjusting.

The Chairperson recognized Jean Redeker, Director of Academic Affairs, Kansas Board of Regents, to address questions raised by the Committee at the August 24, 2009, meeting (Attachment 1). Ms. Redeker responded to all questions.

The Chairperson asked for action on the minutes for the August 24, 2009, meeting. A Committee member noted that "questions" on page two, last paragraph, line three, should be singular. *Representative Huebert moved to approve the minutes as corrected; Senator Lee seconded the motion. The motion passed.*

Chairperson Holmes called on Mr. Wilke to review two bills the Committee had requested for introduction during the 2010 Legislative Session.

Mr. Wilke reviewed the bill concerning the carbon dioxide reduction act; pertaining to liability of the State of Kansas (Attachment 2). After discussion by the Committee, it was *moved by Senator Lee that the bill be prefiled and recommended it be introduced in the House. Representative Huebert seconded the motion. The motion passed.*

Mr. Wilke reviewed the second bill requested by the Committee concerning birth centers (Attachment 3). The purpose of the bill is to replace the term "maternity center" with "birth center." This will bring the statute in line with what the agency and community currently are using. *Senator Schmidt moved that the bill be prefiled and recommended it be introduced in the Senate; Senator Brownlee seconded the motion. The motion passed.*

Chairperson Holmes recognized John Wine, Staff Attorney, to address the proposed rule and regulation noticed for hearing by the Kansas Insurance Department. KAR 40-1-38, insurance companies; hazardous financial condition; standards; corrective actions (Attachment 4).

Mr. Wine noted that KAR 40-1-38 would amend the current regulation relating to insurance companies in hazardous financial condition. The Committee had no questions for Mr. Wine.

The Chairperson introduced Randy Stookey, Counsel with the Department, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture regarding anhydrous ammonia. KAR 4-10-1, definitions; KAR 4-10-1a, prohibited acts; KAR 4-10-1b, reportable events; KAR 4-10-2e, container valves and appurtenances; KAR 4-10-4a, containers; KAR 4-10-4b, markings on containers and systems; KAR 4-10-4c, permanent storage facility design and permanent storage container location; KAR 4-10-4d, pressure-relief valves; KAR 4-10-4e, hose specifications; KAR 4-10-4f, gauging devices; KAR 4-10-5a, tank trucks and semitrailers used for transport for infield delivery; KAR 4-10-6a, transfers; KAR 4-10-6b, transfers; tank cars and transport trucks; additional requirements; KAR 4-10-7, implements of husbandry; KAR 4-10-10, safety; KAR 4-10-16, reactor units; and KAR 4-10-2a, KAR 4-10-2c, KAR 4-10-2d, KAR 4-10-2f, KAR 4-10-2g, KAR 4-10-2h, KAR 4-10-2i, KAR 4-10-2j, KAR 4-10-2k, KAR 4-10-4, KAR 4-10-6, KAR 4-10-15; and KAR 4-10-17, revoked.

Mr. Stookey stated that these proposed rules and regulations are to organize the information into a more logical, efficient, and user-friendly format.

Staff stated that in KAR 4-10-1 (z), material is adopted by reference and should include a date certain. Mr. Stookey stated that this would be added. A Committee member suggested that the agency look at subsection (n) to make sure that the wording is broad enough to include transfer from tanks to applicators in the fields. In KAR 4-10-1a, several Committee members had concerns about (h) and the fact that a 100-pound release would be hard to detect. A question was raised by a Committee member that the term "release" as used in KAR 4-10-1a and KAR 4-10-1b is not defined. In KAR 4-10-1b, staff suggested the paragraph be clarified by moving the phrase "to the secretary or the secretary's authorized representative" to after "report." In KAR 4-10-2e, a Committee member had concerns about the "cast iron" language in (d) and asked the agency to check into whether some fittings might have a cast iron interior. The agency spokesperson indicated that staff of the agency will check on this. In KAR 4-10-4a (e), the Committee asked that the agency ensure the term "firm" would not preclude an individual from being approved. In KAR 4-10-4b (f)(1), the small size of the required lettering concerned a Committee member. Mr. Stookey stated that they were using the federal guidelines. It was suggested that emergency personnel be contacted to see if this would be acceptable. The Committee suggested that the size

of the type should be included in (g) for uniformity. Mr. Stookey stated that the agency would look into both of these items. In KAR 4-10-4f (e), staff noted clarification is needed so that future regulations adopted be limited to weights and measures. A Committee member requested that in KAR 4-10-10 (a)(4), that a "rain suit" be defined by the agency.

Mr. Stookey responded to all questions from the Committee.

The Chairperson recognized Mr. Stookey to speak to the proposed rules and regulations notice for hearing by the Department of Agriculture on pesticides. KAR 4-13-2, pesticide business license application; KAR 4-13-3, categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; KAR 4-13-9, report of address, name, or personnel change by business; KAR 4-13-14, private applicator examination; KAR 4-13-16, supervision of uncertified applicators; KAR 4-13-17, report of address change by certified applicators; KAR 4-13-18, disposal of pesticides and containers; KAR 4-13-20, pesticide business license, renewal and uncertified employee fees; KAR 4-13-21, government agency registration and renewal fees; KAR 4-13-22, revoked; KAR 4-13-23, examination fees; KAR 4-13-24, certified private applicator's certificate fee; KAR 4-13-30, dealer recordkeeping requirements; KAR 4-13-33, pest control technician registration and renewal fees; and KAR 4-13-62, amount of civil penalty.

Mr. Stookey stated that KAR 4-13-9, KAR 4-13-20, KAR 4-13-21, KAR 4-13-24 and KAR 4-13-33 are amended to change the sunset date to July 1, 2015.

Chairperson Holmes welcomed Christine Mennicke, Bureau of Waste Management, to speak to proposed rule and regulation noticed for hearing by the Department of Health and Environment (Attachment 5). KAR 28-29-501, uncontaminated soil.

Ms. Mennicke explained that this proposed new rule and regulation defines "uncontaminated soil" and states how the determination will be made that soil with very low levels of contamination can be considered clean rubble. Clean rubble can be used as general fill material and does not need to be placed in a permitted solid waste disposal area or disposed of as hazardous waste.

Staff stated that on page 2, (d)(2)(C), line 3, the words "which is" should be inserted before "hereby adopted." In response to a question from a Committee member, Ms. Mennicke stated that testing can cost from \$125.00 to \$1,000.00 depending on how many samples are required to be taken. A Committee member questioned the economic statement stating that there would be no increased cost to the Department. Ms. Mennicke stated that, at this time, the agency had not estimated how many people would be using the program.

Chairperson Holmes welcomed Elizabeth Saadi, Ph.D., Interim Director and Acting State Registrar, Bureau for Public Health Informatics, to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 6). KAR 28-17-6, fees for copies, abstracts, and searches; and KAR 28-17-12, delayed certificate of birth, filing fee.

Dr. Saadi stated that due to the decline in the number of vital records sold during 2008 and 2009, there is a need to increase fees to meet increasing operating expenses. Vital records fees used for operating expenses have not been increased since 2003.

The Committee noted that the Economic Impact Statement should show how much revenue will be generated by an increase in fees and that this should be included before the public hearing. It was suggested by staff that if the agency wishes this to become effective on January 1, 2010, the phrase "effective on or after January 1, 2010" should be inserted at the end of each rule and regulation. There were no further questions from the Committee.

The Chairperson recognized Thomas Gross, Bureau of Air, to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 7). KAR 28-19-712, definitions; KAR 28-19-712a, applicability; KAR 28-19-712b, general requirement for heavy-duty diesel vehicles; KAR 28-19-712c, general requirement for load or unload locations; KAR 28-19-712d, exemptions; KAR 28-19-713, applicability; KAR 28-19-713a, emission limitation requirements; KAR 28-19-713b, alternate emissions limit; KAR 28-19-713c, control measures and equipment; and KAR 28-19-713d, compliance demonstration, monitoring, and reporting requirements.

Mr. Gross stated that the proposed rules and regulations are to reduce air pollution emissions for ozone precursors from mobile and stationary sources of ozone in the Kansas portion of the Kansas City Maintenance Area (KCMA). These proposed rules and regulations apply only to Wyandotte and Johnson Counties in Kansas.

Mr. Gross stated that the counties of Jackson, Clay, and Platte in Missouri also are included in the KCMA and that Missouri was backing off the load and unload location restrictions, making Kansas restrictions more stringent than those in Missouri in that specific way. The Committee was concerned that if Kansas has more stringent rules and regulations than Missouri, it would create an unfair business climate. The Committee asked that the agency look at the model law for idle time, possibly eliminating the five minutes which it is now recommending. Mr. Gross stated that if the Environmental Protection Agency (EPA) lowers the ozone standards, Sedgwick County would be subject to those regulations. In response to a question from the Committee, Mr. Gross stated that the penalty for not complying with the EPA's requirements would be \$10,000 per day. Committee members asked Mr. Gross to find out how many cities the same size as the Kansas City Metropolitan Area would be in compliance with the EPA ozone requirements and provide that information to the Committee. If most cities are not able to be in compliance, then the Committee thought that the EPA requirements may be too strict. Senator Brownlee stated that she would be in contact with local officials in Johnson County and local school boards about this set of rules and regulations.

Tom Langer, Bureau of Environmental Health, was welcomed by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-72-1, revoked; KAR 28-72-1a, definitions; KAR 28-72-1c, definitions; KAR 28-72-1d, definitions; KAR 28-72-1e, definitions; KAR 28-72-1g, definition; KAR 28-72-1h, definitions; KAR 28-72-1i, definition; KAR 28-72-1k, definition; KAR 28-72-1l, definitions; KAR 28-72-1m, definition; KAR 28-72-1n, definition; KAR 28-72-1o, definitions; KAR 28-72-1p, definitions; KAR 28-72-1r, definitions; KAR 28-72-1s, definitions; KAR 28-72-1t, definitions; KAR 28-72-1v, definition; KAR 28-72-1x, definition; KAR 28-72-2, general requirements for accreditation, licensure, and certification, adoption by reference; KAR 28-72-3, fees; KAR 28-72-4, training provider accreditation; KAR 28-72-4a, curriculum requirements for training providers. KAR 28-72-40, revoked; KAR 28-72-4c, training provider accreditation, refresher training course; KAR 28-72-5, application process and requirements for the certification of lead inspectors; KAR 28-72-6, application process and requirements for the certification of risk assessors; KAR 28-72-6a, application process and requirements for the certification of an elevated blood lead level investigator; KAR 28-72-7, application process and requirements for the certification of lead abatement workers; KAR 28-72-7a, application process for renovators and requirements for certification in lead-safe work practices; KAR 28-72-8, application process and requirements for the certification of lead abatement supervisors; KAR 28-72-9, application for the certification of project designers; KAR 28-72-10, application process and licensure renewal requirements for lead activity firms; KAR 28-72-10a, application process and licensure renewal requirements for renovation firms; KAR 28-72-11, renewal of lead occupation certificates; KAR 28-72-12, application process and requirements for reapplication after certificate expiration; KAR 28-72-13, work practice standards, general standards; KAR 28-72-14, work practice standards, inspection; KAR 28-72-15,

work practice standards, lead hazard screen; KAR 28-72-16, work practice standards, risk assessment; KAR 28-72-17, work practice standards, elevated blood lead level investigation risk assessments; KAR 28-72-18, work practice standards, lead abatement; KAR 28-72-18a, work practice standards, lead abatement: replacement; KAR 28-72-18b, work practice standards, lead abatement: enclosure; KAR 28-72-18c, work practice standards, lead abatement: encapsulation; KAR 28-72-18d, work practice standards, lead abatement: removal; KAR 28-72-18c, work practice standards, postabatement clearance procedures; KAR 28-72-19, work practice standards, collection and laboratory analysis of samples; KAR 28-72-20, work practice standards, composite dust sampling prohibited; KAR 28-72-21, work practice standards, quarterly reports, recordkeeping; KAR 28-72-22, enforcement; KAR 28-72-51, definitions; KAR 28-72-52, applicability; and KAR 28-72-53, information distribution requirements.

In KAR 28-72-1a, staff stated that the terms "abatement project inspection penalty" and "adequate quality control" were not used in these rules and regulations and should be removed if not used elsewhere. In KAR 28-72-1e(a), KAR 78-72-2 should be changed to KAR 28-72-2. Staff noted that in KAR 28-72-11, page 5, (p) the words "which is" should be added after "June 2003" and in KAR 28-72-3, the first paragraph needs to be clarified to indicate that each training course in each language will require a separate accreditation fee. Staff stated that in KAR 28-72-4, on page 8, (11) it should state when the recordkeeping is to begin. Staff suggested that a cross reference in KAR 28-72-4a (a)(2)(D) and elsewhere should be included where something is adopted by reference. After discussion by the Committee, staff was instructed to draft legislation similar to that used for the solid waste law relating to changes of codes of federal regulations.

A Committee member had questions concerning KAR 28-72-7a(a)(2)(A)(iii) and the use of the social security number on the application form. The Committee stated that this concern was applicable to all instances in the rules and regulations where the social security number was required. Mr. Langer stated that the staff of the agency would take a look at this requirement and see whether any other number could be substituted. In response to questions from the Committee, Mr. Langer stated that since this is a health concern, the results of the investigation are reviewed by KDHE and results are issued quickly. A Committee member requested that the agency provide the Committee with an itemized economic statement showing the costs per house, the costs across the state, and how many houses that these rules and regulations cover.

The Chairperson recognized Julia Mowers to address the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-28a-2, application (licensure of physicians' assistants).

A Committee member asked how many physician assistants were registered within the state. Ms. Mowers stated that there were 821 on file and 747 were active at this time.

Ms. Mowers stated that the concerns from the Committee from the August meeting pertaining to the procedure used by the Board for handling rules and regulations had been shared with the Board members and this matter would be taken up at the Board's next meeting in two weeks.

Darren Root, Staff Attorney, was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Employment Security Board of Review. KAR 48-1-1, filing of appeal; KAR 48-1-2, notice of hearing; KAR 48-1-3, disqualification of referees; KAR 48-1-4, conduct of hearing; KAR 48-1-5, continuance of hearings, withdrawal of appeal; KAR 48-1-6, determination of appeal; KAR 48-2-1, creation and organization; KAR 48-2-2, filing of appeal to the board of review; KAR 48-2-3, hearing of appeals; KAR 48-2-4, additional evidence; KAR 48-2-5, decision of the board of review; KAR 48-3-1, witnesses; KAR 48-3-2, representation before referee and board of review; KAR 48-3-4, service of notice; KAR 48-3-5,

disqualification of board members; KAR 48-4-1, notice of appeal; when filed; and KAR 48-4-2, constructive filing.

Mr. Root stated that the purpose of the proposed rules and regulations was to correct grammatical errors, update statutory and Kansas Supreme Rule citations, and standardize procedure used in the unemployment benefit appeals. These changes are expected to improve participation in the appeal process.

A Committee member had questions concerning KAR 48-1-4, page 1,(a)(2), relative to hearsay evidence and noted that the second sentence contradicts the first sentence. It was suggested that the sentence be changed to state that the referee can give the hearsay evidence less weight. Mr. Root stated that the agency would look at this wording. A Committee member was concerned about the fact that if the call was dropped, the proceeding would continue without that witness. This seems like a penalty for having a cell phone. In KAR 48-3-2(c)(1), staff questioned what would happen if a state agency was involved. Mr. Root stated that the Board would review these suggestions before the public hearing.

Scott Gates, Chief Counsel and Learning Quest Director, was welcomed by Chairperson Holmes to speak to the proposed rule and regulation notice for hearing by the State Treasurer's Office. KAR 3-4-4, eligibility period (Learning Quest).

Mr. Gates stated that this rule and regulation would prevent a beneficiary from receiving a matching grant in any calendar year in which the account owner or beneficiary makes a withdrawal from the account. This will ensure that the program rewards more long-term savings rather than simply churning deposits and withdrawals within the same calendar year.

Randy Forbes was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Pharmacy Board. KAR 68-2-20, pharmacist's function in filling a prescription.

Mr. Forbes stated this rule and regulation identifies a pharmacist's function in filling a prescription. This matter came to the Board's attention when prescriptions were being filled from an internet connection by filling out a questionnaire, with no doctor's visit or physical taking place.

The Committee expressed concern as to whether this would be excluding telemedicine which is used in areas of western Kansas. A Committee member asked if there is an existing definition of a valid pre-existing doctor-patient relationship. A Committee member asked that the staff of the agency look at the definition of "telemedicine" to be sure that this rule and regulation does not exclude it.

A copy of a response from Mr. Forbes to a letter from the Committee dated August 27, 2009, was distributed to the Committee (Attachment 8). Mr. Forbes responded to general questions from the Committee concerning the letter. A Committee member questioned whether the list of Institutional Drug Rooms was complete. Mr. Forbes stated that the list was complete as far as the Board could determine at this time.

Carman Allen was welcomed by Chairperson Holmes to address the rules and regulations noticed for hearing by the Board of Emergency Medical Services. KAR 109-5-1, continuing education; KAR 109-5-4, revoked; KAR 109-6-1, requirements for temporary certification for applicant with non-Kansas credentials; KAR 109-6-2, renewal of attendant, training officer, and instructor-coordinator certificates; KAR 109-10-7, distance learning; KAR 109-11-1, first responder course approval; KAR 109-11-3, emergency medical technician-basic course approval; KAR 109-

11-4, emergency medical technician-intermediate course approval; and KAR 109-11-6, mobile intensive care technician course approval.

Ms. Allen stated the change in KAR 109-5-1 and KAR 109-6-1 reflects the biennial recertification period and inclusion of the supervisory requirement for those practicing under temporary certification which took effect July 1, 2008.

Staff noted that in KAR 109-11-4 (a)(2)(D), the "requirements of Kansas enrichments, module 4" should be adopted by reference with a date certain.

Staff provided copies of a letter from the Office of the Attorney General dated September 15, 2009. The letter was in response to the Committee's inquiry concerning state law requiring state boards and commissions to take affirmative action to approve regulations prior to initiating the statutory approval process (Attachment 9). The second handout was a memorandum dated October 5, 2009, from the Legislative Research Department staff showing the results of a letter sent to state agencies asking the process by which the respective board or commission promulgates its rules and regulations (Attachment 10).

The Committee expressed disappointment in the response received from the Office of the Attorney General.

The Chairperson stated that the November meeting may need to be two days, November 16 and 17, 2009. Chairperson Holmes adjourned the meeting at 5:30 p.m.

### **Committee Comments on Proposed Rules and Regulations**

**Kansas State Insurance Commissioner.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning insurance companies, hazardous financial condition, standards, corrective actions. After discussion, the Committee had no comment.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; prohibited acts; reportable events; container valves and appurtenances; containers; markings on containers and systems; permanent storage facility design and permanent storage container location; pressure-relief valves; hose specifications; gauging devices; tank trucks and semitrailers used for transport for infield delivery; transfers; transfers, tank cars and transport trucks, additional requirements; implements of husbandry; safety; reactor units; and revocations. After discussion, the Committee had the following comments.

KAR 4-10-1. In subsection (z), list a date certain for the adoption by reference of the corresponding CFR or a cross reference to the regulation in which such CFR is adopted by reference. Also, please inform the Joint Committee whether the language found in subsection (n) excludes a self-propelled applicator with a built-in or attached tank.

KAR 4-10-1a. Regarding subsection (h), please explain how the agency determined the 100 pound figure as listed in the regulation and consider whether another measurement would be more appropriate and easier for the equipment user to



determine. This comment also applies to the 100 pound requirement found in KAR 4-10-1b.

KAR 4-10-b. For clarity, consider moving "to the secretary or the secretary's authorized representative" to after "report" in the second line of the regulation. Also consider defining "release" here or in KAR 4-10-1 to exclude release into the soil at application.

KAR 4-10-2e. In subsection (a), please determine whether pressure gauges should be included. Regarding subsection (c), consider how the language found in the regulation will be enforced and whether it conflicts with unlawful acts regulations. In subsection (d), consider removing the requirement that no part or component be galvanized or consist of cast iron, as the Joint Committee questions whether this is practical given that cast iron is found in much of the applicable machinery.

KAR 4-10-4a. If subsections (a) and (b) were copied into this new regulation from a previous regulation, please clarify the effective date for that portion of the regulation. In subsection (e), clarify whether the term "firm" applies to individuals.

Comment. Regarding KAR 4-10-4b (f), the Joint Committee thinks that letters only two inches in height are insufficient in size. Consider changing the regulation to require larger lettering.

KAR 4-10-4c. Please define "source of drinking water" as found in paragraph (d)(2) of the regulation.

KAR 4-10-4f. In subsection (e), please clarify whether the term "regulation" refers only to applicable regulations under the Weights and Measures Act.

KAR 4-10-10. In subsection (a)(1)(4), the Committee requests the agency further define "protective slicker or rain suit," as this appears to be overly broad.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pesticide business license application; categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; report of address, name, or personnel change by business; private applicator examination; supervision of uncertified applicators; report of address change by certified applicators; disposal of pesticides and containers; pesticide business license, renewal, and uncertified employee fees; government agency registration and renewal fees; examination fees; certified private applicator's certificate fee; dealer recordkeeping requirements; pest control technician registration and renewal fees; amount of civil penalty; and revocation. After discussion, the Committee had the following comments.

KAR 4-13-2. In subsection (e), reconsider reinserting "social security number." As currently written, the regulation could conflict with provisions of KSA 74-139 and 74-148.

KAR 4-13-23. Consider rewording the regulation to clarify whether a single \$45 fee covers all examinations for certification in a given category or whether there is a \$45 fee for each separate examination for certification in a category or subcategory.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning uncontaminated soil. After discussion, the Committee had the following comment.

KAR 28-29-501. In subsection (d)(2)(C), consider inserting "which is" before "hereby" in the adoption by reference.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for copies, abstracts, and searches; and delayed certificate of birth, filing fee. After discussion, the Committee had the following comments.

Comment. Please add to the Economic Impact Statement an estimate of the increase in revenue as a result of the changes to the regulations.

Comment. In each applicable regulation, please consider setting the effective date of the regulation to be January 1, 2010, to avoid having the regulations go into effect earlier than your agency wishes.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability; general requirement for heavy-duty diesel vehicles; general requirement for load or unload locations; exemptions; applicability; emission limitation requirements; alternate emissions limit; control measures and equipment; and compliance demonstration, monitoring, and reporting requirements. After discussion, the Committee had the following comments.

Request. Please provide the Joint Committee with a list of all cities or metropolitan areas, similar in size to the Kansas City Metropolitan area, that are able to meet the federal clean air standards as applied in the regulations and as discussed at the October meeting.

Request. Please inform the Joint Committee whether any of the standards set forth in the regulations are stricter than those required by federal law or by the United States Environmental Protection Agency.

Comment. The Joint Committee thinks that no regulations in the set presented at the October meeting should contain stricter standards than those of our neighboring states. It was noted that some of the regulations outlined contain stricter standards than those in Missouri, for example. Please identify any of the requirements which are more stringent than those being implemented in Missouri.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; definitions; definitions; definitions; definition; definitions; definition; definition; definitions; definition; definition; definitions; definitions; definitions; definition; definition; general requirements for accreditation, licensure and certification, adoption by reference; fees; training provider accreditation; curriculum requirements for training providers; training provider accreditation, refresher training course; application process and requirements for the certification of lead inspectors; application process and requirements for the certification of risk assessors; application process and requirements for the certification of an elevated blood lead level

investigator; application process and requirements for the certification of lead abatement workers; application process for renovators and requirements for certification in lead-safe work practices; application process and requirements for the certification of lead abatement supervisors; application for the certification of project designers; application process and licensure renewal requirements for lead activity firms; application process and licensure renewal requirements for renovation firms; renewal of lead occupation certificates; application process and requirements for reapplication after certificate expiration; work practice standards, general standards; work practice standards, inspection; work practice standards, lead hazard screen; work practice standards, risk assessment; work practice standards, elevated blood lead level investigation risk assessments; work practice standards, lead abatement; work practice standards, lead abatement: replacement; work practice standards, lead abatement: enclosure; work practice standards, lead abatement: encapsulation; work practice standards, lead abatement: removal; work practice standards, postabatement clearance procedures; work practice standards, collection and laboratory analysis of samples; work practice standards, composite dust sampling prohibited; work practice standards, quarterly reports, record keeping; enforcement; definitions; applicability; information distribution requirements; and revocations. After discussion, the Committee had the following comments.

KAR 28-72-1a. The definitions in subsections (a) and (e) are not used anywhere in the subsequent regulations. Please consider striking these definitions.

KAR 28-72-1e. In subsection (d), the regulation cited should be "KAR 28-72-2."

KAR 28-72-1l. In subsection (p), consider inserting the words "which is" in front of "hereby" in the fourth line.

KAR 28-72-3. For clarity, the regulation should state that there is a separate accreditation fee for each language version of a ~~class~~ training course.

KAR 28-72-4a. In subsection (a)(2)(D), please cite where the applicable documents were adopted by reference.

KAR 28-72-7a. The Committee is concerned with the requirement here and in other regulations which mandates the submission of a social security number, as this appears to be inconsistent across agencies. Please review these requirements and KSA 74-139 and 74-148 and determine whether the submission of a social security number is required. Please also consider requiring a number from state-issued identification.

Request. In section (d) of the Economic Impact Statement for KAR 28-72-53, please provide the Joint Committee with a written explanation on how the agency determined the \$350 per job amount as listed.

**Kansas State Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (Licensure of physician assistants). After discussion, the Committee had no comment.

**Kansas Home Inspectors Registration Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registration; registration expiration, renewal; reinstatement of registration; fees; approval of educational providers; standards for approval of continuing education courses; and approval of continuing education providers. After discussion, the Committee had the following comments.

KAR 130-2-1. Currently, there are two subsections labeled "(e)." Please fix the error and reletter the subsections accordingly.

Comment. The Joint Committee wishes to express its agreement with your decision to strike certain language from those regulations identified at the meeting.

**Kansas State Treasurer.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility period (Learning Quest). After discussion, the Committee had no comment.

**Kansas Employment Security Board of Review.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning filing of appeal; notice of hearing; disqualification of referees; conduct of hearing; continuance of hearings, withdrawal of appeal; determination of appeal; creation and organization; filing of appeal to the board of review; hearing of appeals; additional evidence; decision of the board of review; witnesses; representation before referee and board of review; service of notice; disqualification of board members; notice of appeal, when filed; and constructive filing. After discussion, the Committee had the following comment.

KAR 48-1-4. In paragraph (a)(2), consider adding language clarifying that the inclusion of hearsay evidence will be decided by the trier of fact and that hearsay may carry less weight than other types of evidence.

**Kansas State Board of Pharmacy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pharmacist's function in filling a prescription. After discussion, the Committee had the following comment.

KAR 68-2-20. Please ensure the language contained in this regulation does not exclude telemedicine such as that practiced by the KU School of Medicine from the definition of "legitimate medical purpose."

**Kansas Board of Emergency Medical Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; requirements for temporary certification for applicant with non-Kansas credentials; renewal of attendant, training officer, and instructor-coordinator certificates; distance learning; first responder course approval; emergency medical technician-basic course approval; emergency medical technician-intermediate course approval; and mobile intensive care technician course approval; and revocation. After discussion, the Committee had the following comment.

KAR 109-11-4. Please consider adopting the Kansas Enrichments, Module 4 as of a date certain.

Prepared by Judy Glasgow  
Edited by Raney Gilliland, Jill Shelley,  
Corey Carnahan

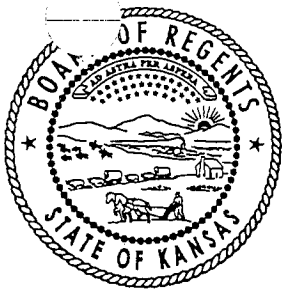
Approved by Committee on:

November 16, 2009  
(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
 COMMITTEE GUEST LIST

DATE: Oct, 5, 2009

NAME	REPRESENTING
Jeff Barnes	KHIRB
Christin Sheldon	Dolsinelli Shugart
Berend Koops	
Julene Miller	KBOR
Jean Redeker	"
Gary Alexander	"
Kip Peterson	"
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Tom Day	KCC
John Wine	KID
Randy Stookey	KDA
Cv Cotsoradis	"
→ Dan Tuggle	"
Rik Schenker	"
Katie Howard	KDA
Gary Meyer	KDA
Martin Hawver	Hawver's Capitol Report
Ron Seeber	KARA



# KANSAS BOARD OF REGENTS

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## Joint Committee on Rules and Regulations October 5, 2009

### *Follow-up Testimony Regarding Qualified Admissions Regulations* *K.A.R. 88-29-1, 88-29-4, 88-29-5, 88-29-7, 88-29-8, 88-29-8a, 88-29-8b, 88-29-9,* *88-29-11, 88-29-12, 88-29-18, and 88-29-19*

#### **Jean Redeker, Director of Academic Affairs**

Good morning Chairman Holmes and Members of the Committee. Thank you for this opportunity to provide additional information regarding the Board of Regents' proposed qualified admissions regulations.

During your August 24, 2009 meeting, the Committee inquired about the number or percentage of students being admitted via exception windows, how many of the students admitted as exceptions were taking remedial courses, how many of those students admitted as exceptions were international students and how many of those students admitted as exceptions graduate. The letter sent by Raney Gilliland on the Committee's behalf states the request as follows:

“The Committee requests the Board report at its October meeting the following statistics, both for the overall system and by educational institution:

- The total numbers of students admitted, for comparison with information requested below (Table 2);
- The actual numbers of students and percentage of overall admissions for those admitted under each type of exception (Table 2);
- The numbers of foreign students admitted under the exception window for nonresident transfer admissions (Table 1);
- The numbers and percentages of students admitted under the exceptions who are enrolled in remedial classes and the numbers of credits of remedial courses, plus a comparison of similar rates and numbers for students not admitted under the exceptions (Table 3); and
- To the extent such information currently is available, the graduate rates for those admitted under the exceptions and a comparison with the overall graduation rate (Table 4).”

Because the statutes and temporary regulations authorizing the exception windows for transfer students took effect July 1, and a majority of admissions decisions were made prior to that date, the numbers we captured for Fall 2009 to meet the Committee's request are necessarily preliminary and not reflective of what a full admissions cycle would look like.

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Additionally, while we are able to give numbers and percentages since the 2001-2002 academic year for those admitted through the resident freshmen exception window, we are unable to do so prior to the current academic year for the two new exception windows. The regulations do not distinguish between domestic and international nonresident transfer students; however, those breakdowns have been provided in Table 1 to fulfill the Committee's request.

The rate institutions fill the resident exception window varies substantially among institutions, as reflected in Table 2. From the inception of the resident freshman exception window through the most recent reporting year, the overall percent of students admitted through this window has averaged slightly more than 5%.

Table 3 provides remedial rates for those admitted as an exception and a comparison with those that met the qualified admissions requirements. Variations in remedial rates are evident across the comparison groups and among the institutions.

Consistent with federal guidelines, graduation rates are measured in 6-year increments. We have also provided data for 4 and 5-year graduation rates, where available. Table 4 provides the graduation rates for those admitted as an exception and a comparison with the overall graduation rate. Variations in graduation rates are evident across the comparison groups and among the institutions. Research has shown graduation rates are affected by various factors, among them student income, location of institution, instructional expenditures, tuition revenue and institutional selectivity. State universities, with one exception, had higher graduation rates when compared to comparable institutions nationwide.

Thank you for the opportunity to appear before you today. I would be happy to address any questions that Committee Members may have.

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TABLE 1

Fall 2009 Nonresident Transfer & Resident Transfer Admits

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	Nonresident Transfer Admits				Resident Transfer Admits		
	Total Admits	% Exceptions	Number of Exceptions*		Total Admits	% Exceptions	Number of Exceptions*
			Domestic**	Internat'l**			
Emporia State University	147	6.10%	9	0	489	4.90%	24
Fort Hays State University	1921	0.20%	5	0	820	2.90%	24
Kansas State University	459	1.70%	8	0	1186	2.50%	30
Pittsburg State University	236	2.50%	6	0	569	3.16%	18
University of Kansas	359	0%	0	0	1164	0%	0
Wichita State University	253	0.80%	2	1	1287	1.70%	22

\*exception window went into effect July 1, 2009

\*\*regulation does not break down exception window by domestic and international



Table 2a

Total Number of Admitted Students and Total Number of Kansas Residents Admitted as Exceptions\* 2001-2004

	2001-2002			2002-2003			2003-2004			2004-2005		
	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions
Emporia State University	1302	164	12.60%	1487	139	9.30%	1563	148	9.50%	1406	134	9.50%
Fort Hays State University	1198	110	9.18%	1349	135	10.00%	1487	129	8.70%	1358	129	9.50%
Kansas State University	7117	200	2.81%	7000	268	3.80%	6969	245	3.50%	6869	217	3.20%
Pittsburg State University	1524	96	6.30%	1333	80	6.00%	1465	88	6.00%	1618	87	5.40%
University of Kansas	8246	47	0.57%	8899	165	1.90%	9244	128	1.40%	9843	96	1.00%
Wichita State University	2679	240	8.96%	2447	208	8.50%	2555	196	7.70%	2541	55	2.20%
	22066	857	3.88%	22515	995	6.58%	23283	934	6.13%	23635	718	5.13%

Table 2b

Total Number of Admitted Students and Total Number of Kansas Residents Admitted as Exceptions\* 2005-2008

	2005-2006			2006-2007			2007-2008			2008-2009		
	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions	Total Admits	Exceptions	% Exceptions
Emporia State University	1468	141	9.60%	1529	139	9.10%	1540	148	9.60%	1341	122	9.10%
Fort Hays State University	1363	123	9.00%	1264	120	9.50%	1286	114	8.90%	1397	102	7.30%
Kansas State University	6584	230	3.50%	6631	228	3.40%	6872	255	3.70%	8609	308	3.60%
Pittsburg State University	1696	100	5.90%	1712	91	5.30%	2046	111	5.40%	1955	127	6.50%
University of Kansas	10059	83	0.80%	9523	110	1.20%	9628	77	0.80%	10809	93	0.90%
Wichita State University	2592	72	2.80%	2664	66	2.50%	2661	45	1.70%	3398	72	2.10%
	23762	749	5.27%	23323	754	5.17%	24033	750	5.02%	27509	824	4.92%

\*only one exception window 2001-2008 and it was for KS residents only

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TABLE 3 Qualified Admissions Remedial Enrollment During First Year Admitted  
Academic Year 2005-2008

Table 3a

	Academic Year 2005 (SU04 + FA04 + SP05)									
	Enrolled Students Admitted as QA Resident Exceptions					Enrolled Students Not Admitted as QA Exceptions				
	Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*			Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*		
	Unduplicated Headcount	Percent of QA Resident Exceptions	Unduplicated Headcount	Percent of QA Resident Exceptions	Remedial Credit Hours	Unduplicated Headcount	Percent of Other Admits	Unduplicated Headcount	Percent of Other Admits	Remedial Credit Hours
Emporia State University	32	26%	92	74%	462	970	74%	336	26%	1,487
Fort Hays State University	61	50%	62	50%	234	2,753	95%	146	5%	495
Kansas State University	51	40%	75	60%	329	5,068	92%	432	8%	1,793
Pittsburg State University	45	69%	20	31%	58	1,598	89%	194	11%	473
University of Kansas Main Campus	89	68%	42	32%	144	5,104	83%	1,052	17%	3,375
Wichita State University	30	67%	15	33%	100	2,746	88%	392	12%	2,170

Table 3b

	Academic Year 2006 (SU05 + FA05 + SP06)									
	Enrolled Students Admitted as QA Resident Exceptions					Enrolled Students Not Admitted as QA Exceptions				
	Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*			Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*		
	Unduplicated Headcount	Percent of QA Resident Exceptions	Unduplicated Headcount	Percent of QA Resident Exceptions	Remedial Credit Hours	Unduplicated Headcount	Percent of Other Admits	Unduplicated Headcount	Percent of Other Admits	Remedial Credit Hours
Emporia State University	10	8%	111	92%	665	971	75%	329	25%	1,483
Fort Hays State University	86	66%	44	34%	144	2,696	96%	110	4%	342
Kansas State University	93	60%	63	40%	293	5,347	92%	458	8%	2,004
Pittsburg State University	58	78%	16	22%	42	1,679	89%	200	11%	468
University of Kansas Main Campus	26	41%	38	59%	120	5,060	82%	1,086	18%	3,567
Wichita State University	36	55%	29	45%	178	2,788	88%	387	12%	2,221

Table 3c

	Academic Year 2007 (SU06 + FA06 + SP07)									
	Enrolled Students Admitted as QA Resident Exceptions					Enrolled Students Not Admitted as QA Exceptions				
	Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*			Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*		
	Unduplicated Headcount	Percent of QA Resident Exceptions	Unduplicated Headcount	Percent of QA Resident Exceptions	Remedial Credit Hours	Unduplicated Headcount	Percent of Other Admits	Unduplicated Headcount	Percent of Other Admits	Remedial Credit Hours
Emporia State University	42	38%	69	62%	382	1,059	76%	327	24%	1,419
Fort Hays State University	90	71%	37	29%	117	3,043	95%	149	5%	468
Kansas State University	76	52%	69	48%	285	5,510	93%	416	7%	1,637
Pittsburg State University	54	77%	16	23%	50	1,583	92%	134	8%	320
University of Kansas Main Campus	43	46%	51	54%	165	5,082	85%	909	15%	2,964
Wichita State University	19	45%	23	55%	135	2,880	89%	350	11%	1,914

Table 3d

	Academic Year 2008 (SU07 + FA07 + SP08)									
	Enrolled Students Admitted as QA Resident Exceptions					Enrolled Students Not Admitted as QA Exceptions				
	Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*			Not Enrolled in Remedial Coursework		Enrolled in Remedial Coursework*		
	Unduplicated Headcount	Percent of QA Resident Exceptions	Unduplicated Headcount	Percent of QA Resident Exceptions	Remedial Credit Hours	Unduplicated Headcount	Percent of Other Admits	Unduplicated Headcount	Percent of Other Admits	Remedial Credit Hours
Emporia State University	40	28%	104	72%	585	951	75%	323	25%	1,448
Fort Hays State University	75	71%	31	29%	102	3,128	96%	140	4%	432
Kansas State University	95	58%	70	42%	281	5,618	94%	358	6%	1,353
Pittsburg State University	58	73%	21	27%	103	1,572	90%	177	10%	896
University of Kansas Main Campus	24	33%	49	67%	177	4,878	84%	910	16%	3,102
Wichita State University	23	66%	12	34%	56	3,202	90%	359	10%	1,790

\* Student was enrolled in at least one remedial course during the first year admitted.  
Source: Kansas Postsecondary Database 09/29/2009

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**Table 4 Qualified Admissions Academic Years 2001-2004**  
**Graduation Rates of Resident Exceptions\* and Overall Graduation Rates**

Academic year 2001						
	Cumulative Grad Rate of QA Exceptions			Cumulative Overall Graduation Rate		
	4-yr	5-yr	6-yr	4-yr	5-yr	6-yr
Emporia State University	8%	25%	30%	22%	41%	45%
Fort Hays State University	10%	20%	26%	21%	43%	48%
Kansas State University				25%	52%	58%
Pittsburg State University	8%	21%	24%	45%	50%	51%
University of Kansas	7%	29%	36%	31%	54%	60%
Wichita State University	2%	10%	15%	17%	35%	42%

National Comparison of  
 Grad Rates at Similar  
 Institutions\*\*

6-yr
38%
38%
60%
38%
60%
34%

Academic Year 2002						
	Cumulative Grad Rate of QA Exceptions			Cumulative Overall Graduation Rate		
	4-yr	5-yr	6-yr	4-yr	5-yr	6-yr
Emporia State University	9%	24%	27%	21%	40%	
Fort Hays State University	5%	21%	28%	27%	41%	
Kansas State University	4%	17%	25%	25%	52%	
Pittsburg State University	10%	24%	26%	29%	46%	
University of Kansas	14%	34%	40%	31%	54%	
Wichita State University	7%	14%	18%	17%	32%	

Academic Year 2003						
	Cumulative Grad Rate of QA Exceptions			Cumulative Overall Graduation Rate		
	4-yr	5-yr	6-yr	4-yr	5-yr	6-yr
Emporia State University	4%	11%	14%	22%		
Fort Hays State University	3%	10%	15%	24%		
Kansas State University	8%	24%	30%	26%		
Pittsburg State University	22%	38%	40%	27%		
University of Kansas	8%	31%	38%	32%		
Wichita State University	3%	16%	25%	15%		

Academic Year 2004						
	Cumulative Grad Rate of QA Exceptions			Cumulative Overall Graduation Rate		
	4-yr	5-yr	6-yr	4-yr	5-yr	6-yr
Emporia State University	6%	19%				
Fort Hays State University	4%	10%				
Kansas State University	1%	15%				
Pittsburg State University	15%	28%				
University of Kansas	9%	31%				
Wichita State University	0%	3.50%				

\*from 2001-July 1, 2009 once exception window was in effect and it was for resident freshman

\*\*Source: U.S. Dept of Education, National Center for Education Statistics

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 10/2/2009

## PROPOSED BILL NO. \_\_\_\_\_

By Joint Committee on Administrative Rules and Regulations

AN ACT concerning the carbon dioxide reduction act; pertaining to liability of the state of Kansas; pertaining to rules and regulations; amending K.S.A. 2009 Supp. 55-1636 and 55-1637 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Except as permitted by the Kansas tort claims act, no provision of this act shall establish or create or impose upon the commission, any agent or employee thereof, or the state of Kansas any liability or responsibility to pay any damages resulting from the leak or discharge of carbon dioxide from any carbon dioxide injection well or the underground storage of carbon dioxide.

(b) This section shall be supplemental to and a part of the carbon dioxide reduction act.

Sec. 2. K.S.A. 2009 Supp. 55-1636 is hereby amended to read as follows: 55-1636. K.S.A. 2009 Supp. 55-1636 through 55-1640, section 1, 79-233 and 79-32,256, and amendments thereto, may be cited as the carbon dioxide reduction act.

Sec. 3. K.S.A. 2009 Supp. 55-1637 is hereby amended to read as follows: 55-1637. (a) As used in K.S.A. 2009 Supp. 55-1637 through 55-1640, and amendments thereto:

(1) "Carbon dioxide injection well" means any hole or penetration of the surface of the earth used to inject carbon dioxide for underground storage or for enhanced recovery of hydrocarbons and any associated machinery and equipment used for such injection of carbon dioxide. "Carbon dioxide injection well" does not include underground storage.

(2) "Commission" means the state corporation commission.

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(3) "Underground storage" means any underground formation where carbon dioxide is injected for sequestration.

(b) Except as provided in subsection (h), for the purposes of protecting the health, safety and property of the people of the state, and preventing escape of carbon dioxide into the atmosphere and pollution of soil and surface and subsurface water detrimental to public health or to plant, animal and aquatic life, the commission, on or before July 1, 2008, shall adopt separate and specific rules and regulations establishing requirements, procedures and standards for the safe and secure injection of carbon dioxide and maintenance of underground storage of carbon dioxide. Such rules and regulations shall include, but not be limited to: (1) Site selection criteria; (2) design and development criteria; (3) operation criteria; (4) casing requirements; (5) monitoring and measurement requirements; (6) safety requirements, including public notification; (7) closure and abandonment requirements, including the financial requirements of subsection (e); and (8) long-term monitoring.

(c) Except as provided in subsection (h), the commission may adopt rules and regulations establishing fees for permitting, monitoring and inspecting operators of carbon dioxide injection wells and underground storage. Fees collected by the commission under this subsection shall be remitted by the commission to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the carbon dioxide injection well and underground storage fund.

(d) The commission or the commission's duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the commission or representative deems

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necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(e) Any company or operator receiving a permit under the provisions of this act shall demonstrate annually to the commission evidence, satisfactory to the commission, that the permit holder has financial ability to cover the cost of closure of the permitted facility as required by the commission.

(f) The commission may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(g) Rules and regulations adopted under this act shall apply to any carbon dioxide injection well or underground storage, whether in existence on the effective date of this act or thereafter.

(h) No rule and regulation adopted under the provisions of this section shall create or impose upon the commission, any agent or employee thereof or the state of Kansas any liability for the underground storage of carbon dioxide or the maintenance of any carbon dioxide injection well or underground storage of carbon dioxide except as permitted by the Kansas tort claims act. From and after July 1, 2010, any requirement in any rule and regulation adopted by the commission which conflicts with the prohibition prescribed in this section shall be null and void.

Sec. 4. K.S.A. 2009 Supp. 55-1636 and 55-1637 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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## PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning birth centers; amending K.S.A. 65-501, 65-502, 65-504, 65-505, 65-506, 65-507, 65-508, 65-512 and 65-513 and K.S.A. 2009 Supp. 39-923, 59-2123, 65-525 and 65-67a10 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2009 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of aging.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating

24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) "Residential health care facility" means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this



act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than eight individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the staff and rules and regulations developed by the department on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building,

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or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) "Licensing agency" means the secretary of aging.

(17) "Skilled nursing home" means a nursing facility.

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- (18) "Intermediate nursing care home" means a nursing facility.
- (19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.
- (20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.
- (21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the secretary of health and environment on principles of assisted living and such other requirements as may be established by the secretary of health and environment by rules and regulations.
- (22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.
- (23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.
- (24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.
- (25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.
- (26) The term "intermediate personal care home" for purposes of those individuals applying

for or receiving veterans' benefits means residential health care facility.

(27) "Paid nutrition assistant" means an individual who is paid to feed residents of an adult care home, or who is used under an arrangement with another agency or organization, who is trained by a person meeting nurse aide instructor qualifications as prescribed by 42 C.F.R. 483.152, 42 C.F.R. 483.160 and paragraph (h) of 42 C.F.R. 483.35, in effect on October 27, 2003, and who provides such assistance under the supervision of a registered professional or licensed practical nurse.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity birth centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq. and amendments thereto and which provide services only to hospice patients.

(c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(e) Nursing facilities with less than 60 beds converting a portion of the facility to residential

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health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 2. K.S.A. 2009 Supp. 59-2123 is hereby amended to read as follows: 59-2123. (a) Except as otherwise provided in this section:

(1) Any person who advertises that such person will adopt, find an adoptive home for a child or otherwise place a child for adoption shall state in such advertisement whether or not such person is licensed and if licensed, under what authority such license is issued and in what profession;

(2) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to a woman to come to such person's ~~maternity~~ birth center during pregnancy or after delivery; and

(3) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to any parent, guardian or custodian of a child to place such child in such person's home, institution or establishment.

(b) The provisions of subsection (a)(1) shall not apply to the department of social and rehabilitation services or to an individual seeking to adopt a child.

(c) As used in this section:

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(1) "Advertise" means to communicate by newspaper, radio, television, handbills, placards or other print, broadcast, telephone directory or electronic medium.

(2) "Person" means an individual, firm, partnership, corporation, joint venture or other association or entity.

(3) "~~Maternity center~~" "Birth center" means the same as provided in K.S.A. 65-502 and amendments thereto.

(d) Any person who violates the provisions of this section shall be guilty of an unclassified misdemeanor and shall be fined not more than \$1,000 for each violation.

Sec. 3. K.S.A. 65-501 is hereby amended to read as follows: 65-501. It shall be unlawful for any person, firm, corporation or association to conduct or maintain a ~~maternity~~ birth center or a child care facility for children under 16 years of age without having a license or temporary permit therefor from the secretary of health and environment. Nothing in this act shall apply to:

(a) A residential facility or hospital that is operated and maintained by a state agency as defined in K.S.A. 75-3701 and amendments thereto; or

(b) a summer instructional camp that:

(1) Is operated by a Kansas educational institution as defined in K.S.A. 74-32,120, and amendments thereto, or a postsecondary educational institution as defined in K.S.A. 74-3201b, and amendments thereto;

(2) is operated for not more than five weeks;

(3) provides instruction to children, all of whom are 10 years of age and older; and

(4) is accredited by an agency or organization acceptable to the secretary of health and environment.

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Sec. 4. K.S.A. 65-502 is hereby amended to read as follows: 65-502. "~~Maternity center~~" "Birth center" means a facility which provides delivery services for normal, uncomplicated pregnancies but does not include a medical care facility as defined by K.S.A. 65-425 and amendments thereto.

Sec. 5. K.S.A. 65-504 is hereby amended to read as follows: 65-504. (a) The secretary of health and environment shall have the power to grant a license to a person to maintain a ~~maternity~~ birth center or child care facility for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept on those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place on the premises where the business is conducted. The secretary of health and environment shall grant no license in any case until careful inspection of the ~~maternity~~ birth center or child care facility shall have been made according to the terms of this act and until such ~~maternity~~ birth center or child care facility has complied with all the requirements of this act. Except as provided by this subsection, no license shall be granted without the approval of the secretary of social and rehabilitation services. The secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license. The secretary of health and environment may extend, without the approval of the secretary of social and rehabilitation services, the temporary permit to operate for an additional period not to exceed 90 days if an

applicant is not in full compliance with the requirements of this act but has made efforts towards full compliance.

(b) (1) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the maternity birth center or child care facility shall be made under the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the right of entry and access to the premises of the center or facility and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such center or facility shall be filed with the secretary of health and environment.

(2) In cases where neither approval or disapproval can be given within a period of 30 days following formal request for such a study, the secretary of health and environment may issue a temporary license without fee pending final approval or disapproval of the center or facility.

(c) Whenever the secretary of health and environment refuses to grant a license to an applicant, the secretary shall issue an order to that effect stating the reasons for such denial and within five days after the issuance of such order shall notify the applicant of the refusal. Upon application not more than 15 days after the date of its issuance a hearing on the order shall be held in accordance with the provisions of the Kansas administrative procedure act.

(d) When the secretary of health and environment finds upon investigation or is advised by the secretary of social and rehabilitation services that any of the provisions of this act or the provisions of K.S.A. 59-2123 and amendments thereto are being violated, or that the maternity birth center or child care facility is maintained without due regard to the health, comfort or welfare of the residents, the secretary of health and environment, after giving notice and conducting a hearing in

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accordance with the provisions of the Kansas administrative procedure act, shall issue an order revoking such license. The order shall clearly state the reason for the revocation.

(e) If the secretary revokes or refuses to renew a license, the licensee who had a license revoked or not renewed shall not be eligible to apply for a license or for a certificate of registration to maintain a family day care home under K.S.A. 65-518 and amendments thereto for a period of one year subsequent to the date such revocation or refusal to renew becomes final.

(f) Any applicant or licensee aggrieved by a final order of the secretary of health and environment denying or revoking a license under this act may appeal the order in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 6. K.S.A. 65-505 is hereby amended to read as follows: 65-505. (a) The annual fee for a license to conduct a maternity birth center or child care facility shall be fixed by the secretary of health and environment by rules and regulations in an amount not exceeding the following:

- (1) For a maternity birth center, \$75;
- (2) for a child placement agency, \$75;
- (3) for a child care resource and referral agency, \$75; and
- (4) for any other child care facility, \$35 plus \$1 times the maximum number of children authorized under the license to be on the premises at any one time.

The license fee shall be paid to the secretary of health and environment when the license is applied for and annually thereafter. The fee shall not be refundable. No fee shall be charged for a license to conduct a home for children which is a family foster home as defined in K.A.R. 28-4-311, and amendments thereto. Fees in effect under this subsection (a) immediately prior to the effective date of this act shall continue in effect on and after the effective date of this act until a different fee

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is established by the secretary of health and environment by rules and regulations under this subsection.

(b) Any person who fails to renew the person's license within the time required by rules and regulations of the secretary shall pay to the secretary a late renewal fee of \$10.

(c) Any licensee applying for an amended license shall pay to the secretary of health and environment a fee established by rules and regulations of the secretary in an amount not exceeding \$35.

(d) The secretary of health and environment shall remit all moneys received by the secretary from fees under the provisions of this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 7. K.S.A. 65-506 is hereby amended to read as follows: 65-506. The secretary of health and environment shall serve notice of the issuance, suspension or revocation of a license to conduct a maternity birth center or child care facility or the issuance, suspension or revocation of a certificate of registration for a family day care home to the secretary of social and rehabilitation services, juvenile justice authority, department of education, office of the state fire marshal, county, city-county or multi-county department of health, and to any licensed child placement agency or licensed child care resource and referral agency serving the area where the center or facility is located. A maternity birth center or child care facility that has had a license suspended, revoked or denied by the secretary of health and environment or a family day care home that has had a certificate of registration suspended, revoked or denied by the secretary of health and environment shall notify in writing the parents or guardians of the enrollees of the suspension, revocation or denial. Neither

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the secretary of social and rehabilitation services nor any other person shall place or cause to be placed any maternity patient or child under 16 years of age in any maternity birth center or child care facility not licensed by the secretary of health and environment or family day care home not holding a certificate of registration from the secretary of health and environment.

Sec. 8. K.S.A. 65-507 is hereby amended to read as follows: 65-507. (a) Each maternity birth center licensee shall keep a record upon forms prescribed and provided by the secretary of health and environment and the secretary of social and rehabilitation services which shall include the name of every patient, together with the patient's place of residence during the year preceding admission to the center and the name and address of the attending physician. Each child care facility licensee shall keep a record upon forms prescribed and provided by the secretary of health and environment which shall include the name and age of each child received and cared for in the facility; the name of the physician who attended any sick children in the facility, together with the names and addresses of the parents or guardians of such children; and such other information as the secretary of health and environment or secretary of social and rehabilitation services may require. Each maternity birth center licensee and each child care facility licensee shall apply to and shall receive without charge from the secretary of health and environment and the secretary of social and rehabilitation services forms for such records as may be required, which forms shall contain a copy of this act.

(b) Information obtained under this section shall be confidential and shall not be made public in a manner which would identify individuals.

Sec. 9. K.S.A. 65-508 is hereby amended to read as follows: 65-508. (a) Any maternity birth center or child care facility subject to the provisions of this act shall: (1) Be properly heated, plumbed, lighted and ventilated; (2) have plumbing, water and sewerage systems which conform to

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all applicable state and local laws; and (3) be operated with strict regard to the health, comfort, safety and social welfare of the residents.

(b) Every maternity birth center or child care facility shall furnish or cause to be furnished for the use of each resident and employee individual towel, wash cloth, comb and individual drinking cup or sanitary bubbling fountain, and toothbrushes for all other than infants, and shall keep or require such articles to be kept at all times in a clean and sanitary condition. Every maternity birth center or child care facility shall comply with all applicable fire codes and rules and regulations of the state fire marshal.

(c) (1) The secretary of health and environment with the cooperation of the secretary of social and rehabilitation services shall develop and adopt rules and regulations for the operation and maintenance of maternity birth centers and child care facilities. The rules and regulations for operating and maintaining maternity birth centers and child care facilities shall be designed to promote the health, safety and welfare of the residents who are to be served in such facilities by ensuring safe and adequate physical surroundings, healthful food, supervision and care of the residents by capable, qualified persons of sufficient number, an adequate program of activities and services and such appropriate parental participation as may be feasible under the circumstances. Boarding schools are excluded from requirements regarding the number of qualified persons who must supervise and provide care to residents.

(2) All rules and regulations for operating and maintaining maternity centers, birth centers and child care facilities in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of health and environment until revised, amended, revoked or nullified pursuant to law.

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(d) Each child cared for in a child care facility, including children of the person maintaining the facility, shall be required to have current such immunizations as the secretary of health and environment considers necessary. The person maintaining a child care facility shall maintain a record of each child's immunizations and shall provide to the secretary of health and environment such information relating thereto, in accordance with rules and regulations of the secretary, but the person maintaining a child care facility shall not have such person's license revoked solely for the failure to have or to maintain the immunization records required by this subsection.

(e) The immunization requirement of subsection (d) shall not apply if one of the following is obtained:

(1) Certification from a licensed physician stating that the physical condition of the child is such that immunization would endanger the child's life or health; or

(2) a written statement signed by a parent or guardian that the parent or guardian is an adherent of a religious denomination whose teachings are opposed to immunizations.

Sec. 10. K.S.A. 65-512 is hereby amended to read as follows: 65-512. It is hereby made the duty of the secretary of health and environment to inspect or cause to be inspected at least once every 12 months every ~~maternity~~ birth center or child care facility, and for that purpose it shall have the right of entry and access thereto in every department and to every place in the premises, shall call for and examine the records which are required to be kept by the provisions of this act and shall make and preserve a record of every inspection. The licensee shall give all reasonable information to the authorized agent of the secretary of health and environment and shall afford every reasonable facility for viewing the premises and seeing the patients or children therein. No such patient or child without the consent of the patient or child shall be required to be interviewed by any agent unless

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the agent is an authorized person or a licensed physician.

Sec. 11. K.S.A. 65-513 is hereby amended to read as follows: 65-513. Whenever an authorized agent of the secretary of health and environment or secretary of social and rehabilitation services finds a maternity birth center or child care facility is not being conducted according to law, it shall be the duty of such agent to notify the licensee in writing of such changes or alterations as the agent determines necessary in order to comply with the requirements of the law, and the agent shall file a copy of such notice with the secretary of health and environment. It shall thereupon be the duty of the licensee to make such changes or alterations as are contained in the written notice within five days from the receipt of such notice. Notice shall be given in accordance with the provisions of the Kansas administrative procedure act.

Sec. 12. K.S.A. 2009 Supp. 65-525 is hereby amended to read as follows: 65-525. (a) Records in the possession of the department of health and environment or its agents regarding child care facilities, maternity birth centers or family day care homes shall not be released publicly in a manner that would identify individuals, unless required by law.

(b) Records containing the name, address and telephone number of a child care facility, maternity birth center or family day care home in the possession of the department of health and environment or its agents shall not be released publicly unless required by law.

(c) Records that cannot be released by subsection (a) or (b) may be released to: (1) An agency or organization authorized to receive notice under K.S.A. 65-506, and amendments thereto; (2) a criminal justice agency; (3) any state or federal agency that provides child care services, funding for child care or child protective services; (4) any federal agency for the purposes of compliance with federal funding requirements; (5) any local fire department; (6) any child and adult care food

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program sponsoring agency; or (7) any local disaster agency.

(d) Any state or federal agency or any person receiving records under subsection (a) or (b) shall not disseminate the records without the consent of the person whose records will be disseminated unless required by law. Any state or federal agency or any person receiving records under subsection (e) may disseminate the information contained in the records without the consent of the person whose records will be disseminated.

(e) The secretary of health and environment may release the name, address and telephone number of a maternity birth center, child care facility or family day care home when the secretary determines that the release of the information is necessary to protect the health, safety or welfare of the public or the patients or children enrolled in the maternity birth center, child care facility or family day care home.

(f) Any records under subsection (a) or (b) shall be available to any member of the standing committee on appropriations of the house of representatives or the standing committee on ways and means of the senate carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. Such records shall not identify individuals but shall include data and contract information concerning specific facilities.

(g) In any hearings conducted under the licensing or regulation provisions of K.S.A. 65-501 et seq. and amendments thereto, the presiding officer may close the hearing to the public to prevent public disclosure of matters relating to persons restricted by other laws.

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Sec. 13. K.S.A. 2009 Supp. 65-67a10 is hereby amended to read as follows: 65-67a10. Every ~~maternity birth~~ center and medical care facility licensed by the department of health and environment to operate in the state shall adopt written policies and inform parents regarding their options for disposition or taking of fetal remains in an event of a fetal death.

Sec. 14. K.S.A. 65-501, 65-502, 65-504, 65-505, 65-506, 65-507, 65-508, 65-512 and 65-513 and K.S.A. 2009 Supp. 39-923, 59-2123, 65-525 and 65-67a10 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

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**MEMORANDUM**

**To:** Joint Committee on Administrative Rules and Regulations  
**From:** John Wine, Kansas Insurance Department  
**Re:** K.A.R. 40-1-38  
**Date:** October 5, 2009

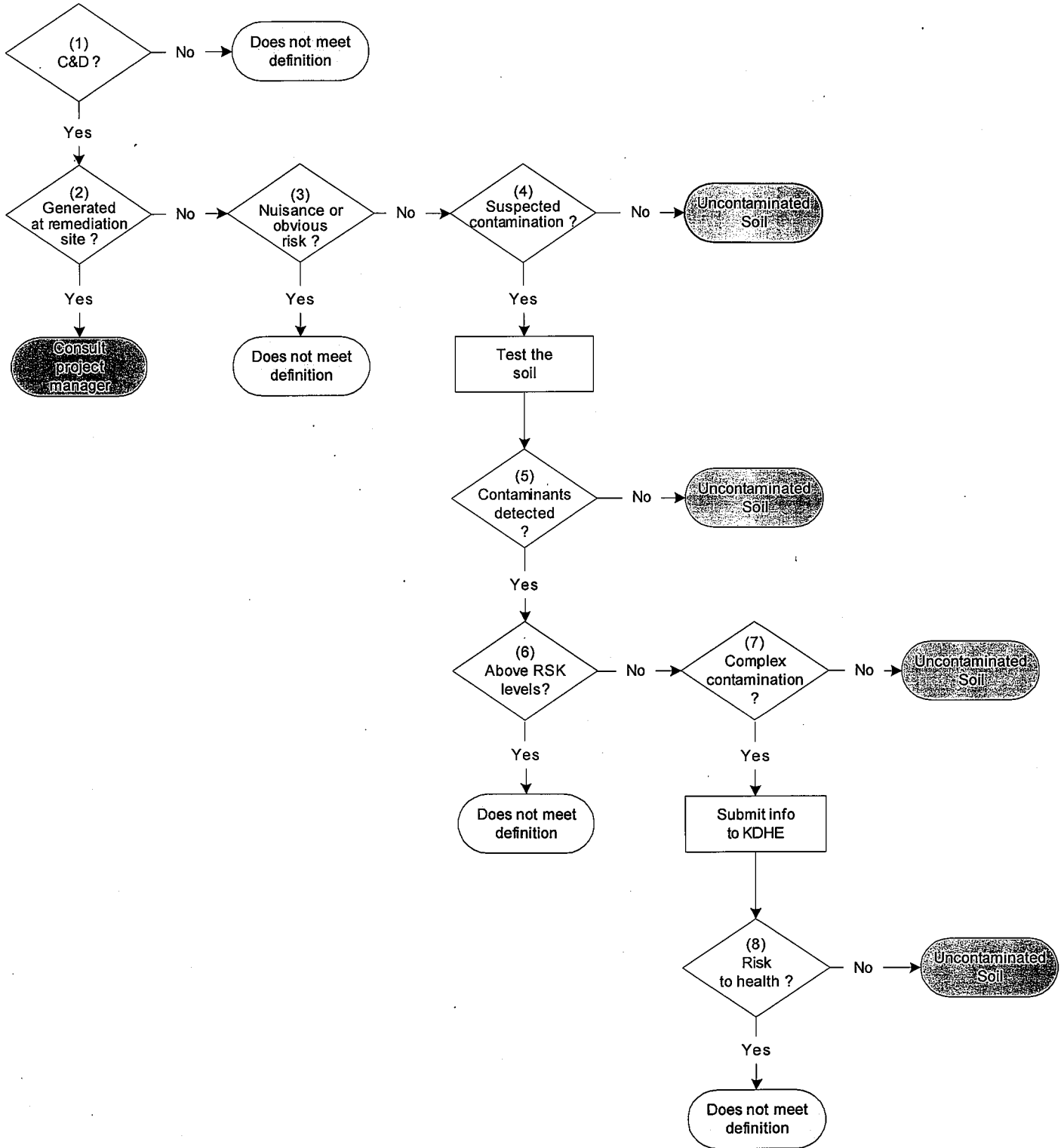
My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department (KID). With me today to answer any substantive questions about this proposed amended regulation is Ken Abitz, Director of our Financial Surveillance Division. I would like to thank the committee for allowing us to appear and comment on the proposed amendment to K.A.R. 40-1-38.

K.A.R. 40-1-38 is being proposed to amend the current regulation relating to insurance companies in hazardous financial condition. The proposed amendment adopts an August 4, 2009 policy which is an adaptation of the model regulation adopted by the National Association of Insurance Commissioners (NAIC). The policy establishes standards for the Insurance Commissioner to consider when determining if and when a company's continued operation could pose a threat to policyholders, creditors or the general public. The model regulation was amended late last year and our policy reflects those changes in order to be consistent with the standards that will be used in other states.

The proposed amended regulation will not have any known economic impact on other insurance companies, government agencies, regulated entities, large or small businesses or the general public.

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# Is it "Uncontaminated Soil"?



# **Presentation to Joint Committee on Rules and Regulations**

**Presented by Elizabeth Saadi, Ph.D.  
Interim Director and Acting State Registrar  
Bureau for Public Health Informatics**

**Kansas Department of Health and Environment**

**October 5, 2009**

Chairman Holmes and members of the Committee, I appreciate the opportunity to appear before you today to discuss our proposal to increase fees for vital records and services.

As you are aware, KDHE is charged with the State responsibility of civil registration of citizens through Article 24—The Uniform Vital Statistics Act—KSA 65-2401 et seq. This process, which involves registering, storing and issuing vital event records assures that Kansas citizens' vital events are registered, stored and available for issuance. These records are needed by the public for proof of citizenship, international travel, school entry, retirement, settling insurance claims, among other needs. Over 370,000 certified copies of records are issued annually.

The civil registration fee fund was created to assure the vital statistics function continues to operate effectively. Approximately \$3.9 million is collected in fees collected from sales of vital records certificates and deposited into this fund. However, for each vital record sold, \$4 is distributed into three funds for local assistance such as the Family and Children's Investment Fund, District Coroner's fund and Child Autopsy fund (approximately \$875,000).

Due to declines in the number of vital records sold during SFY 2008 and 2009, there is a need to increase fees to meet increasing operating expenses. Income has declined 7.46% with an anticipated 2.5% decline predicted in 2010. Expenses have increased due to at least two salary increases for administrative staff (over 50% of vital records processing is performed by administrative staff classifications), increasing rent costs and technology enhancements that assure rapid, efficient and secure service for our customers. In addition, to combat fraud and abuse, identity theft and other crimes of dishonesty, investments have been made for enhanced security paper, and internal system processes developed within the vital statistics computer system have increased operating expenses.

Vital records fees used for operating expenses have not been increased since SFY 2003. To assure solvency of the civil registration function for Kansas, a fee increase is proposed. Pricing for certified copies will be increased to \$15 for first copies and \$15 for second copies of all vital event certificates. These fees conform to those charged by neighboring states and will provide funding to meet current expenses.

I thank you for this opportunity to present to you regarding our proposal to increase fees for certified copies of vital records and will gladly stand for questions the committee may have on this topic.

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# Kansas Vital Statistics

## Civil Registration and Health Statistics

- KDHE/ Office of Vital Statistics is responsible for registering, storing and issuing birth, death, marriage, divorce and stillbirth certificates to Kansas-born citizens.
- Kansas registers over 40,000 births, 28,000 deaths, 22,000 marriages, and 12,000 divorces per year. Over 370,000 certified copies are issued.
- A staff of 64 FTE provide services to the public through walk-in, phone, mail and Internet. All are trained and dedicated to prompt and courteous customer service.
- The vital statistics function via the civil registration fee fund generates over \$3.9 million per year with approximately \$460,000 being transferred to the Family and Children's Investment Fund, \$234,000 to the District Coroner's fund and \$180,000 to the Child Autopsy fund in SFY 2009 (approximately \$875,000).
- Due to a customer service focus and strategic investments in information technology, Kansans experience excellent service from Kansas' vital records office, typically with certified copies provided within 15 minutes of submitting a walk-in application. On average, a standard mail in request is returned to the requestor within a week of receipt. Ordering opportunities via internet, phone, fax and mail.
- Strategic processes have been implemented to curb potential fraud and abuse of vital records that can lead to stolen and misused identities. Computer system processes, collaboration with KDOR to identify fraudulent documents (drivers licenses) and enhanced security paper to name a few.
- Web-based reporting processes result in hospitals submitting 91% of births and funeral homes reporting 85% deaths (fact of death) within 5 days of the event. Kansas is a nationally recognized leader for vital statistics reporting and quality of data receiving numerous awards from the National Center for Health Statistics and Social Security Administration for timely reporting of vital events.
- Numerous entities depend on vital event records to improve governmental requirements including the Secretary of State (voter registration), Medicaid program (citizenship verification) and KPERS.
- High quality, timely health statistics are generated from vital records. The public, program managers, researchers and policy makers are provided access to these statistics through web-based (24/7) and printed materials used to improve the health of Kansans. ([www.kdheks.gov/bphi](http://www.kdheks.gov/bphi))

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**Testimony to Joint Committee on Administrative Rules and Regulations**

**October 5, 2009**

**Thomas Gross, Bureau of Air, KDHE**

**Proposed New Air Quality Regulations**

**K.A.R. 28-19-712 through K.A.R 28-19-712d**

**and**

**K.A.R. 28-19-713 through K.A.R. 28-19-713d**

Good morning Mr. Chairman and committee members. I am Tom Gross, from the Bureau of Air at KDHE. The Bureau is proposing two new sets of regulations:

- K.A.R. 28-19-712 through K.A.R. 28-19-712d, regarding idle reduction of heavy-duty diesel vehicles; and
- K.A.R. 28-19-713 through K.A.R. 28-19-713d, regarding the reduction of nitrogen oxides, or NO<sub>x</sub>, emissions

These regulations are proposed in order to reduce ozone pollution in Johnson and Wyandotte counties in Kansas. Federal regulations required the State of Kansas to address continuing violations of the National Ambient Air Quality Standard by submitting an Ozone Maintenance Plan to reduce ozone precursors such as NO<sub>x</sub>. The ozone maintenance plan was required to include contingency measures that would be triggered if the Kansas City area violated the federal ozone standard. The EPA officially approved the Kansas City 8-Hour Ozone Maintenance Plan on October 9, 2007.

The Maintenance Plan's contingency measures include a heavy-duty diesel truck idle reduction regulation and a NO<sub>x</sub> reduction regulation. The proposed idle reduction regulations will limit engine idle time of heavy-duty diesel vehicles and will apply to all owners and operators of commercial, public and institutional diesel vehicles in Johnson and Wyandotte counties having a gross vehicle weight rating greater than 14,001 pounds. The proposed rules impact heavy-duty diesel vehicles by limiting their idling to no more than 5 minutes in any 60 minute period, unless one of the exemptions applies as listed in the proposed regulations. Additionally, owners and operators of load and unload locations will be required to implement

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Attachment 7

procedures to limit idling of heavy-duty diesel trucks to no more than 30 minutes in any 60 minute period.

The owner of a load or unload location may need to provide electrical hookups for truck drivers or an area for truck drivers to wait while their truck is waiting to load or unload, especially if a truck is not equipped with idle reduction technology. Costs for onboard idle reduction technologies vary, with the most common technology being installation of an auxiliary power unit, or APU that provides electricity to power heating, air conditioning and other creature comforts. An APU is allowed by the proposed regulations as an alternative to idling. The Bureau of Air has received funds from EPA under the Diesel Emissions Reduction Act (DERA) and the American Recovery and Reinvestment Act (ARRA) and is administering grants totaling over \$5 million. These funds are available to assist with the purchase and installation of idle-reduction equipment.

The costs associated with the implementation and enforcement of these proposed regulations will be absorbed by existing resources. The KDHE contracts with local agencies will be adjusted to emphasize the need for public outreach, education and compliance assistance to facilitate the implementation of these idle reduction rules.

The proposed NO<sub>x</sub> reduction regulations will reduce NO<sub>x</sub> emissions at the largest stationary source facilities in Johnson and Wyandotte counties. These proposed regulations will apply to three facilities that emit over 1,000 tons/year of NO<sub>x</sub>. For the power generating facilities, the proposed regulations establish emission rates for NO<sub>x</sub> based on making improvements to the combustion process, not by adding pollution control equipment to the stack.

The two power generating facilities are Nearman Creek Power Station and Quindaro Power Station, both in Wyandotte County and operated by the Kansas City Board of Public Utilities (BPU). Cost analyses performed in 2007 of Nearman Creek indicated the proposed emission limits could be achieved by installing new low NO<sub>x</sub> burners with overfire air and a neural network. According to BPU estimates, this control technology has a capital cost of \$11.68 million and a cost effectiveness of \$750 per ton of NO<sub>x</sub> reduced. At Quindaro Power Station, the most cost effective technology available is low NO<sub>x</sub> burners with overfire air. According to AirControlNet, an EPA cost analysis tool, this technology has an estimated capital cost of \$5.2 million and an estimated cost effectiveness of \$868 per ton of NO<sub>x</sub> reduced.

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The remaining affected facility is AGC Flat Glass North America, located in southern Johnson County. Potential control options for this plant include low NO<sub>x</sub> burners, selective non-catalytic reduction, and oxy-firing. According to AirControlNet, these potential control options have estimated capital costs between \$1.4 million and \$9.5 million, and an estimated cost effectiveness between \$1,014 and \$2,754 per ton of NO<sub>x</sub> reduced.

In summary, K.A.R. 28-19-712 through K.A.R. 28-19-712d and K.A.R. 28-19-713 through K.A.R. 28-19-713d are being proposed as a result of the violation in 2007 of the 8-hour ozone standard in Kansas City. If these proposed regulations are not adopted, Kansas will be in violation of the maintenance plan that was approved by the EPA. If no action is taken on the approved maintenance plan measures, the EPA has the authority to re-designate the KCMA to non-attainment status, which would impose stricter standards and regulations than those currently being proposed.

KDHE has shared the goals and need for the contingency control measures and solicited input from stakeholders for both sets of proposed regulations. Multiple meetings have been held with BPU and AGC Flat Glass concerning NO<sub>x</sub> reduction regulations. A number of seminars and workshops have been held with members of the trucking community concerning potential idle reduction regulations. Contact has also been made with trucking organizations, such as the Kansas Motor Carriers Association and the Owner-Operator Independent Drivers Association. Full public participation has been encouraged.

The Bureau has provided copies of the proposed regulations and Regulatory Impact Statement to the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards. That concludes my testimony. Thank you Mr. Chairman and members of the committee.

7-3

LAW OFFICES OF  
**FRIEDEN & FORBES**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOHN C. FRIEDEN P.A.\*  
RANDALL J. FORBES P.A.  
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TOPEKA, KANSAS 66601-0639

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\* Also Admitted In Missouri

September 22, 2009

Raney Gilliland  
Assistant Director for Research  
Kansas Legislative Research Department  
State Capital Bldg., Room 010 West  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

RE: Kansas Pharmacy Board

Dear Raney:

This letter is intended to be the Kansas Pharmacy Board's reply to your August 27, 2009 letter.

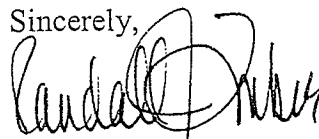
1. KAR 68-7-21. The Pharmacy Board voted to adopt both suggestions made by the Joint Committee on Administrative Rules and Regulations. The Board considers these changes to be substantive and therefore, following reapproval by the Department of Administration and the Attorney General's office, the Board will conduct another public hearing.

2. Request. Attached is a list of the Institutional Drug Rooms that have registered with the Board of Pharmacy. The list also provides the name of the Pharmacist in Charge or the responsible physician.

3. KAR 68-20-16. The Pharmacy Board adopted the suggestions of the Joint Committee. The Board does not consider these changes substantive and therefore does not contemplate another public hearing following reapproval by the Department of Administration and the Attorney General's office.

Please let me know if the Joint Committee would like further information.

Sincerely,



Randall J. Forbes, P.A.  
FRIEDEN & FORBES

RJF:lv  
Encl.  
cc: Debra Billingsley

Joint Committee on Administrative  
Rules and Regulations  
October 5, 2009  
Attachment 8



PharmacyName	PharmacyAddress	PharmacyCity	Pha	PIC	REMARK
BAKER UNIVERSITY STUDENT HEALTH CTR	PO BOX 65 519 GROVE ST	BALDWIN CITY	KS	GARY ROBERTS	1-09323 / R.Ph.
ST HAYS STATE UNIVERSITY STUDENT	600 PARK STREET LOWER LEVEL MEMORIAL UNION	HAYS	KS	DALLAS RICHARDS, MD	
EMPORIA STATE STUDENT HEALTH CENTER	1200 COMMERCIAL, BOX 4008	EMPORIA	KS	DR KENDALL WRIGHT	CONTACT
KANSAS STATE SCHOOL FOR THE DEAF	450 EAST PARK STREET	OLATHE	KS	ROBERT NOTTINGHAM, MD	
KSU SPORTS MEDICINE	2201 KIMBALL AVENUE BRAMLAGE COLISEUM	MANHATTAN	KS	KEITH A. WRIGHT, MD	SPORTS MEDICINE MEDICAL
NESMITH ATHLETIC TRAINING ROOM	UNIVERSITY OF KANSAS ALLEN FIELDHOUSE, 1651 NAISMITH	LAWRENCE	KS	CATHY JO THRASHER	1-09595 / R.Ph.
LARNED CORRECTIONAL MENTAL HEALTH	R.R. #3, HIGHWAY 264	LARNED	KS	SCOTT GULICK	1-11810 / R.Ph.
EL DORADO CORRECTIONAL FACILITY	1737 SE HIGHWAY 54 P.O. BOX 311	EL DORADO	KS	FRED EATON	1-13620
LANSING CORRECTIONAL FACILITY - MAX	73 HIGHWAY & KANSAS AVE.	LANSING	KS	FRED EATON	1-13620
LANSING CORRECTIONAL FACILITY - EAST	222 N HWY D	LANSING	KS	FRED EATON	1-13620
OSAWATOMIE CORRECTIONAL FACILITY	CARMICHAEL DRIVE PO BOX 546	OSAWATOMIE	KS	SCOTT GULICK	1-11810
TOPEKA CORRECTIONAL FACILITY - CENT	815 SE RICE ROAD	TOPEKA	KS	SCOTT GULICK	1-11810 / R.Ph.
TOPEKA CORRECTIONAL FACILITY - I-MA	815 SE RICE ROAD	TOPEKA	KS	SCOTT GULICK	1-11810 / R.Ph.
WICHITA STATE STUDENT HEALTH CENTER	1845 NORTH FAIRMONT 209 AHLBERG HALL	WICHITA	KS	HANG BUI	1-12444 / R.Ph.
LANSING CORRECTIONAL FACILITY-MEDIUM	73 HIGHWAY & KANSAS AVE.	LANSING	KS	FRED EATON	1-13620
JOHNSON COUNTY ADULT DETENTION CTR.	101 NORTH KANSAS AVENUE (JOHNSON CO. SHERIFF DEPT.)	OLATHE	KS	JOHN GAMBLE, DO	PRACTITIONER / M.D./D.O.
KSU, DEPARTMENT OF CLINICAL SCIENCES	1800 DENISON AVENUE A-119 MOSIER HALL	MANHATTAN	KS	EUGENE F. DEDONDER	1-10104
LABETTE CORRECTIONAL CONSERVATION C	2501 WEST 7TH	OSWEGO	KS	STEVEN G. CHARLES	1-09657
AIRPORT ADULT DETENTION CENTER	27745 WEST 159TH STREET	NEW CENTURY	KS	JOHN GAMBLE, DO	/ M.D./D.O.
COLBY COMMUNITY COLLEGE-STUDENT HEA	1255 S RANGE	COLBY	KS	KATHLEEN L ARNBERGER	1-11214
WICHITA WORK RELEASE FACILITY	401 SOUTH EMPORIA	WICHITA	KS	FRED EATON	1-13620
EL DORADO CORRECTIONAL FACILITY-NORTH	1737 SE HWY 54	EL DORADO	KS	FRED EATON	1-13620
EL DORADO CORRECTIONAL FACILITY-EAST	172 HIGHWAY 105	TORONTO	KS	FRED EATON	1-13620
MIDLAND HOSPICE CARE	120 SW FRAZIER CIRCLE	TOPEKA	KS	JAMES SCHWARTZ	1-11046 / R.Ph.
JOHNSON COUNTY JUVENILE DETENTION CENTER	915 WEST SPRUCE	OLATHE	KS	JAMES KERR	1-09171 / R.Ph.
CORRECTIONS CORP OF AMERICA	100 HIGHWAY TERRACE	LEAVENWORTH	KS	CATHY MARTIN	
RECEPTION & DIAGNOSTIC UNIT	1737 SE HWY 54	ELDORADO	KS	FRED EATON	1-13620
WASHBURN UNIVERSITY STUDENT HEALTH CENTER	MORGAN HALL RM 170 1700 SW COLLEGE AVE	TOPEKA	KS	IRIS GONZALEZ	04-27034 / M.D./D.O.
LARNED CORRECTIONAL MENTAL HEALTH FACILITY-W	ROUTE 3, HWY 264	LARNED	KS	SCOTT GULICK	1-11810 / R.Ph.
SHAWNEE COUNTY JAIL	DEPT. OF CORRECTIONS 501 SE 8TH ST	TOPEKA	KS	RICK STONE	1-11112 / R.Ph.
JEFFREY ENERGY CENTER MEDICAL ROOM	3RD FLOOR TURBINE DECK, UNIT 1	ST MARYS	KS	KIM M DAVIES	04-25902 / M.D./D.O.
WYANDOTTE COUNTY DETENTION CENTER	710 NORTH 7TH STREET	KANSAS CITY	KS	FRED EATON	1-13620
HOSPICE OF RENO COUNTY, INC. HOSPICE HOUSE	1523 E. 20TH AVE.	HUTCHINSON	KS	PATRICK MOWDER	1-09421 / R.Ph.
PITTSBURG STATE UNIVERSITY STUDENT HEALTH CEN	1801 S. BROADWAY	PITTSBURG	KS	DONALD HOLSINGER, M.D.	04-13271
BUTLER COLLEGE HEALTH SERVICES	901 S. HAVERFILL RD. WEST DORMITORY RM. 162	EL DORADO	KS	KERRY W. MOSER	1-10484 / R.Ph.
HYNES HOSPICE CENTER AT VCSF	929 N. ST. FRANCIS-8TH FLOOR	WICHITA	KS	VICTORIA SNYDER	1-12343 / R.Ph.
NORTON CORRECTIONAL FACILITY	HIGHWAY #36 PO BOX 546	NORTON	KS	FRED EATON	1-13620
STOCKTON CORRECTIONAL FACILITY	1210 SOUTH CEDAR	STOCKTON	KS	SCOTT GULICK	1-11810
NANOSCALE CORPORATION	1310 RESEARCH PARK DRIVE	MANHATTAN	KS	DR. JAMES LAURINO	PHYSICIAN / M.D./D.O.
HUTCHINSON CORRECTIONAL FACILITY - SOUTH	1101 E. AVE. G	HUTCHINSON	KS	FRED EATON	1-13620
ELLSWORTH CORRECTIONAL FACILITY	1607 STATE STREET PO BOX 107	ELLSWORTH	KS	FRED EATON	1-13620
HUTCHINSON CORRECTIONAL FACILITY-EAST	400 SOUTH HALSTEAD	HUTCHINSON	KS	FRED EATON	1-13620
WINFIELD CORRECTIONAL FACILITY	1806 PINECREST CIRCLE	WINFIELD	KS	FRED EATON	1-13620
HUTCHINSON CORRECTIONAL FACILITY-CENTRAL	500 SOUTH REFORMATORY ROAD PO BOX 1568	HUTCHINSON	KS	FRED EATON	1-13620
Sedgwick County Dentention Center	141 WEST ELM	WICHITA	KS	FRED EATON	1-13620
OXYCHEM	8200 SOUTH RIDGE ROAD	WICHITA	KS	DR. STEVEN HIGHERS	AH2304006 / M.D./D.O.
KANSAS JUVENILE CORRECTIONAL COMPLEX	1430 NW 25TH ST	TOPEKA	KS	DENNIS E SALE D.O.	AS2633522
JOHNSON JUVENILE CORRECTIONAL FACILITY	1900 N. 2ND STREET	ATCHISON	KS	DR. RYAN THOMAS	0424755
LEWIS & CLAY HOSPICE CENTER	730 HOLLY LANE PO BOX 2238	SALINA	KS	STEVEN A. AUSTIN	1-11780 / R.Ph.
JOHNSON COUNTY CORRECTIONS RESIDENTIAL CENT	141 MISSION PARKWAY	NEW CENTURY	KS	JOHN GAMBLE, DO	/ M.D./D.O.

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PharmacyName	PharmacyAddress	PharmacyCity	Pha	PIC	REMARK
SOUTH WIND HOSPICE HOME	496 YUCCA LANE	PRATT	KS	THOMAS R. FRAZIER	1-08321 / R.Ph.
MEADE COUNTY SHERIFF DEPT.	223 N. MEADE CENTER	MEADE	KS	ANGELA M. BACHMAN	1-12996
RY COUNTY DETENTION CENTER	826 N. FRANKLIN	JUNCTION CITY	KS	DR. GREGG COUP	PRACTITIONER
ELLIS COUNTY JAIL	LAW ENFORCEMENT CENTER 102 WEST 12TH	HAYS	KS	KATRINA HESS, MD	PRACTITIONER / M.D./D.O.
HONEYWELL HEALTH SERVICES	23500 W. 105TH ST. HEALTH SERVICES CLINIC	OLATHE	KS	RAMON NICHOLS, MD	PRACTITIONER / M.D./D.O.
OTTAWA COUNTY DETENTION CENTER	312N. OTTAWA	MINNEAPOLIS	KS	JOE WOEHL	1-13873 / R.Ph.
ELK COUNTY SHERIFF'S OFFICE	100 N. CEDAR	HOWARD	KS	JULIE PERKINS	1-11838 / R.Ph.
NORTH CENTRAL KANSAS REGIONAL JUVENILE DETEN	820 N MONROE	JUNCTION CITY	KS	DR. GREGG COUP	04-30430 PHYSICIAN / M.D./D.
EL DORADO CORRECTIONAL INFIRMARY	1737 SE HIGHWAY 54	EL DORADO	KS	FRED EATON	1-13620
ANDERSON FAMILY FOOTBALL COMPLEX ATR	1146 MAIN ST	LAWRENCE	KS	CATHY JO THRASHER	1-09595 / R.Ph.
COFFEY COUNTY JAIL	605 W NEO.SHO	BURLINGTON	KS	PHILIP M BEYER	1-10742
S AND S DRUG	110 S MILL	BELOIT	KS	MAX M HEIDRICK	

8-8



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**STEVE SIX**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

September 15, 2009

Raney L. Gilliland  
Assistant Director for Research  
Kansas Legislative Research Department  
State Capitol Building, Room 010-West  
Topeka, Kansas 66612

Dear Mr. Gilliland:

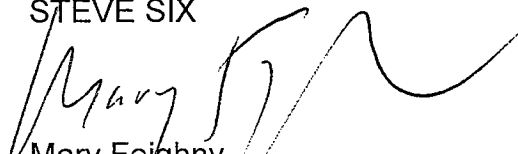
Attorney General Six has asked me to respond to your letter of September 2, 2009, requested on behalf of the Joint Committee on Administrative Rules and Regulations. In response to your query whether state law requires state board and commissions to take affirmative action to approve a regulation prior to the long journey through the statutory approval process, the answer is "no." The Rules & Regulations Filing Act requires state agencies to take formal action to "adopt" regulations but that adoption occurs at the end of the process.

I understand that the Committee is inquiring of boards and commissions regarding their process in reviewing and approving proposed amendments to a regulation prior to submission to the Department of Administration (DOA). My experience with many of these agencies is that formal action is taken at an open meeting to approve proposed changes to a particular regulation and commence the regulation approval process. However, knowing that DOA and the Attorney General will word-smith proposed amendments, the boards/commissions approve only the substance of the amendment rather than the form.

I hope this information is helpful.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
STEVE SIX



Mary Feighny  
Deputy Attorney General

MF/jm

Joint Committee on Administrative  
Rules and Regulations  
October 5, 2009  
Attachment 9

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

010-West-Statehouse, 300 SW 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

October 5, 2009

**To:** Joint Committee on Administrative Rules and Regulations

Below are the results of the letter sent to state agencies where either a board or commission is the governing body.

The governing body must grant approval before proceeding with the Attorney General's Office, Department of Administration, or Joint Committee on Administrative Rules and Regulations (JCARR).

- Human Rights Commission;
- State Board of Barbering;
- State Conservation Commission;
- Kansas Commission on Veterans' Affairs;
- Kansas Board of Cosmetology;
- Court of Tax Appeals;
- Behavioral Sciences Regulatory Board;
- Governmental Ethics Commission;
- Kansas Dental Board;
- Kansas Racing and Gaming Commission;
- Board of Pharmacy;
- Kansas State Board of Technical Professions;
- Kansas Board of Emergency Medical Services;
- Board of Accountancy;
- Board of Examiners in the Fitting and Dispensing;
- Kansas Board of Examiners in Optometry;
- Kansas Board of Veterinary Examiners;
- State Board of Education;
- State Board of Indigents' Defense Services;
- Kansas Public Employees Retirement System Board of Trustees;
- Kansas Board of Nursing; and
  
- Board of Mortuary Arts ("depending upon the time frame" rules and regulations may not be approved by the Board before this step is taken).

We could not tell whether the Board, Commission, or Authority approved proposed rules and regulations before sending them to the Attorney General's Office, Department of Administration, JCARR, or public hearing.

- Kansas Health Policy Authority;
- Kansas Corporation Commission; and
- State Board of Healing Arts.

Joint Committee on Administrative  
Rules and Regulations  
October 5, 2009  
Attachment 10

Have not received information:

- Board of Regents; and
- Pooled Money Investment Board.

**Notes:**

- Kansas Board of Nursing and Kansas Board of Cosmetology do routine reviews of all regulations.
- State Board of Indigents' Defense Services - Board adopts a temporary regulation, then the public hearing is held, followed by the JCARR review.
- The Kansas Parole Board "does not currently have an official policy or process in place for the promulgation and adoption of rules and regulations. The Board does recognize the importance of this process. Plans are currently being made to work with counsel at the Attorney General's Office to develop a policy for the agency."

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