

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 4, 2010
Room 535-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Representative John Faber
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

Members Absent

Senator Chris Steineger
Representative Shirley Palmer

Staff Present

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

Others Present

Phyllis Gilmore, Behavioral Sciences Regulatory Board
Marsha Schrempp, Behavioral Sciences Regulatory Board
Leslie Allen, Behavioral Sciences Regulatory Board
Sharon L. Stueve, Behavioral Sciences Regulatory Board
J. P. Small, Kansas Department of Transportation
Danielle Marten, Kansas Department of Transportation

Marla Rhoden, Kansas Department of Health and Environment
Susan Vogel, Kansas Department of Health and Environment
Sean Miller, Capitol Strategies
John Kiefhaber, Kansas Chiropractic Association
Herb Holmberg, Kansas Department of Labor
Darren Root, Kansas Department of Labor
Betty Wright, Kansas Dental Board
Peggy Hanna, Kansas Department of Administration
Jo Remp, Kansas Department of Administration
Shelly King, Kansas Department of Administration
Cheryl Magathan, Kansas Real Estate Appraisal Board
Berend Koops, Hein Law Firm
Kathleen Selzler Lippert, Kansas Board of Healing Arts

Morning Session

Chairperson Holmes ask for action on the minutes for the November 16, 2009, meeting of the Committee. *A motion was made by Senator V. Schmidt to approve the minutes as presented. Senator Ostmeyer seconded the motion. The motion passed.*

The Chairperson asked Raney Gilliland, Kansas Legislative Research Department (KLRD), to review the two letters that were distributed to all Committee members. Mr. Gilliland explained that the Committee requested a letter be sent to the Attorney General asking for input on the regulation promulgated by the Board of Veterinary Examiners after the November meeting (Attachment 1). The Office of the Attorney General replied by the letter dated December 14, 2009, stating that a standard for pain management is within the Board's very broad statutory authority (Attachment 2).

Chairperson Holmes welcomed Phyllis Gilmore, Executive Director, and Sharon Stueve, Behavioral Sciences Regulatory Board, to speak to the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-3, fees.

Ms. Stueve stated that this rule and regulation was being proposed to address a budget shortfall in the agency. This rule and regulation introduces an original license fee for all levels of social work licenses. Presently, licensees only are required to pay an application fee. The additional fee would generate a total of \$91,100 over one year. The Behavioral Sciences Regulatory Board would receive \$72,880 and \$18,220 would go to the state. In response to a question about excess amounts being swept into the State General Fund, Ms. Gilmore stated that the amount would not be received by the agency at one time, but would be received throughout the year.

Betty Wright, Executive Secretary, Kansas Dental Board, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-5-1, KAR 71-5-2, KAR 71-5-3, KAR 71-5-4, KAR 71-5-5, and KAR 71-5-6 are REVOKED. KAR 71-5-7, definitions; KAR 71-5-8, applicability of regulations; KAR 71-5-9, general requirements; KAR 71-5-10, level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; KAR 71-5-11, level II permit: parenteral conscious sedation; KAR 71-5-12, level III permit: deep sedation and general anesthesia; and KAR 71-5-13, grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.

Ms. Wright stated that rules and regulations KAR 71-5-7 through 13 came before the Committee at the July meeting. After reviewing them at the public hearing, the Board members realized that KAR 71-5-9 was not what the Board intended, and it is being amended.

Committee members questioned how often inspections were performed throughout the state. Ms. Wright stated that in some locations it may be every three years, especially those in Western Kansas. Others are done annually. In response to a question concerning whether the Board could impose penalties, Ms. Wright stated that the penalties for violations are included in the statute.

Marla Rhoden, Director, Kansas Department of Health and Environment (KDHE), was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the KDHE, Health Occupations Credentialing. KAR 28-61-1, definitions; KAR 28-61-2, qualifications for licensure; KAR 28-61-5, license renewal; and KAR 28-61-8, assistants.

Ms. Rhoden stated that these rules and regulations had not been reviewed for some time and the Department had some questions concerning what assistants could and could not perform. It was suggested by the Committee that in KAR 28-61-5, page 6, (c) a more general reference to electronic training devices be used to avoid amending the rules and regulations as new equipment is developed. Ms. Rhoden responded to all questions of a general nature from Committee members.

Chairperson Holmes recognized Jonathan Small, Special Counsel, Department of Transportation (KDOT), to address the proposed rules and regulations noticed for hearing by KDOT. KAR 36-42-1, definitions; KAR 36-42-2, application and supporting documents; KAR 36-42-3, intermodal transportation project; eligibility; KAR 36-42-4, fund use; KAR 36-42-5, financial assistance agreement requirements; KAR 36-42-6, interest rate and servicing fees; KAR 36-42-7, repayment of financial assistance; KAR 36-42-8, approved project statements; and KAR 36-42-9, approved project costs; accounting requirement.

Mr. Small stated that these rules and regulations are being introduced to implement and administer the intermodal transportation revolving fund program.

In KAR 36-42-1, page 1, the definitions need to be rearranged in alphabetical order. Mr. Small stated that this would be done. Mr. Small responded to all questions of a general nature raised by Committee members.

Chairperson Holmes recognized Ken Wilke, Office of the Revisor of Statutes, to review the proposed bill concerning certain entities licensed by the Department of Social and Rehabilitation Services (SRS) requiring a criminal history background check on certain employees and applicants for employment (Attachment 3). This bill was requested by Senator Brownlee after the November 16 hearing. Mr. Wilke stated that there may need to be some amendments made since the rules and regulations that this bill cover have not been adopted at this time. Mr. Wilke stated that the bill does not make a distinction between those who might be hired for clerical or secretarial work and those who are providing services to persons. A question was raised by a Committee member as to who would be paying for these background checks. Mr. Wilke stated that it would be the entity that was licensed by SRS.

It was recommended that the bill be amended to include the contractor personnel, as well as Community Developmental Disability Organization personnel, and the charge for the background checks be billed to the contractor. The Committee recommended that the bill be clarified so that it does not cover clerical help. A Committee member requested that on page 3 (e) line three the word "only" be inserted after "the fund shall be used."

The Committee requested that Mr. Wilke redraft the bill with the changes requested by the Committee and have Senator Brownlee review it before filing. *Senator Brownlee moved that the bill be introduced in the Senate after making the changes requested by the Committee. The motion was seconded by Senator Schmidt. The motion passed.*

Chairperson Holmes welcomed Peggy Hanna, Department of Administration, to speak to the proposed rules and regulations noticed for hearing by the Department of Administration. KAR 1-16-8, use of privately owned or operated conveyance, limitations; reimbursement for transportation and subsistence expenses; KAR 1-16-15, reduced allowances; KAR 1-16-18, subsistence allowance; KAR 1-16-18a, designated high-cost geographic areas; and KAR 1-16-20, miscellaneous expense definition.

Ms. Hanna stated that the State of Kansas is implementing an integrated financial management system. As a part of the implementation, the state is reviewing business processes, policies, regulations, and statutes. The decision was made to not customize the software application to accommodate current processes because of the extra expense. The current methodology uses a calculation based on a travel day divided into quarters, with each quarter day having a specific reimbursable amount set by Department of Administration policy. This is based on the allowance of \$9.50 for a quarter and a total of \$38 per day. This change was proposed so that there is no change in the total amount of travel subsistence per day; rather, the daily amount of \$38 will be divided into three meal allowances.

A concern was raised by the Committee that reimbursement should be standardized between agencies within the state and not at the discretion of each agency. A staff member had a question concerning the term in KAR 1-16-8, (1) line 7 "used the fastest public transportation available" and that this should be clarified. A question was raised concerning the statement that no taxi or terminal expenses shall be allowed at the destination. A Committee member questioned why, in KAR 1-16-15, it is necessary to have prior approval for an agency to pay reduced meal allowances or lodging expense. The Committee suggested that the language of the rules and regulations be clarified especially where the use of double negatives may make it confusing. An example is in KAR 1-16-15, (3) "the agency shall be authorized to not pay any subsistence for this travel." It was suggested that it read "the agency shall not pay any subsistence for this travel." It was the Committee's suggestion that since the agency was reviewing the rules and regulations, a thorough review should be conducted at this time. The Committee requested that staff send copies of the proposed KAR 1-16-15 to the chairpersons, vice-chairpersons, and ranking minority members of the Senate Ways and Means and House Appropriation committees; and to the Speaker of the House, Senate President, and the House and Senate Minority Leaders for their information and review during the 2010 Legislative Session.

The Chairperson recessed the meeting until 1:30 p.m.

Afternoon Session

Chairperson Holmes reconvened the meeting at 1:30 p.m. and welcomed Herb Holmberg and Darren Root, Kansas Department of Labor, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Labor. KAR 49-55-1, applicability; KAR 49-55-2, definitions; KAR 49-55-3, approved inspector certification program; KAR 49-55-4, inspection certification; KAR 49-55-5, nondestructive testing of amusement rides; KAR 49-55-6, record retention; KAR 49-55-7, location of evidence of inspection; KAR 49-55-8, procedure for selection of

an amusement ride for records audit; KAR 49-55-9, location of safety instructions; KAR 49-55-10, reporting of amusement ride locations; KAR 49-55-11 49-55-11, submitting reports and other documents; and KAR 49-55-12, violations; reporting violations to the attorney general, county attorney, or district attorney.

Mr. Holmberg stated that the proposed rules and regulations apply to all permanent amusement rides and temporary amusement rides within the state. Owners and operators of amusement rides will be required to maintain amusement ride inspection-related records and operator training certificates. Owners and operators of covered amusement rides will be required to comply with any requests of inspection by the Kansas Department of Labor of these amusement ride records. The proposed regulations do not apply to "home owned amusement rides" as defined in the statute. These rules and regulations are the result of legislation passed during the 2009 Legislative Session.

Staff noted that the term "home owned, not for profit entity" was not defined anywhere. Staff called attention to the fact that the terms were not consistent when referring to "basic, advanced, or senior level" in KAR 49-55-3, and referred to as "level one, or higher, certification" in KAR 49-55-4. Mr. Holmberg stated that they would look at these. A Committee member suggested that in KAR 49-55-6, a clarification be made as to the location of the records and length of time they are to be kept. It was suggested that an alternate location be designated. A Committee member stated that the economic impact statement did not show the cost to the regulated community. Mr. Root stated that this will be corrected and a copy will be furnished to the Committee. Several Committee members expressed concern that these rules and regulations would be harmful to home-owned, not-for-profit amusement rides in their districts. Mr. Root stated that they would be looking at each of these situations individually and work with them on a case-by-case basis. The Committee suggested that a copy of an economic statement prepared by the Board of Healing Arts be provided to the Department of Labor to give it guidelines on what information is required.

Cheryl Magathan, Kansas Real Estate Appraisal Board, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-2-1, Licensed classification; education requirements; KAR 117-2-2, licensed classification; appraisal experience requirement; KAR 117-3-1, general classification; education requirements; KAR 117-3-2, general classification; appraisal experience requirement; KAR 117-4-1, residential classification; education requirements; KAR 117-4-2, residential classification; appraisal experience requirement; and KAR 117-8-1, uniform standards of professional appraisal practice.

Ms. Magathan stated that these proposed rules and regulations were the result of an audit which found that the state was not in compliance and that real property appraisal experience must take place on an improved property. Staff suggested that language be clarified referencing where the six hours of experience shall take place for property appraisal on an improved property. The Committee suggested that the economic impact statement be changed to show whether the regulation is mandated by federal law.

Chairperson Holmes recognized Kathleen Selzler Lippert, Interim Executive Director, Kansas Board of Healing Arts, to address the proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts. KAR 100-29-1, applications; KAR 100-55-1, application; KAR 100-72-2, application; KAR 100-73-2, application; KAR 100-55-7, continuing education; license renewal; KAR 100-11-1, amount.

In response to questions from the Committee concerning why the Board was accepting a nondriver identification number and not a driver's license identification number, Ms. Selzler Lippert stated that this Committee had requested that the nondriver identification number be included on a

previous set of rules and regulations that came before the Committee. The Committee recommended that the driver's license identification number should be included in these rules and regulations since it is in the statute, and would not have to come back before the Committee. The Committee requested that the Board check the statute to see what they are required to provide to SRS for child support enforcement purposes and to the Kansas Department of Revenue's Director of Taxation on licensure fees.

The Committee expressed appreciation to the Board for the economic impact statements that were included in all the rules and regulations.

The Chairman adjourned the meeting at 3:30 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees (social work). After discussion, the Committee had no comment.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability of regulations; general requirements; Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; Level II permit: parenteral conscious sedation; Level III permit: deep sedation and general anesthesia; grounds for refusal to issue permit or for revocation, suspension, or limitation of permit; and revocations. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; qualifications for licensure; license renewal; and assistants. After discussion, the Committee had the following comment.

KAR 28-61-5. In subsection (f)(6)(C), the Committee suggests that the agency look for or develop technology neutral language so that it will not be necessary to update this language to adapt to new technological devices in the future.

Kansas Department of Transportation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application and supporting documents; intermodal transportation project, eligibility; fund use; financial assistance agreement, requirements; interest rate and servicing fees; repayment of financial assistance; approved project statements; and approved project costs, accounting requirement. After discussion, the Committee had the following comment.

KAR 36-42-1. Please place the defined terms in alphabetical order.

Kansas Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning use of privately owned or operated conveyance, limitations, reimbursement for transportation and subsistence expenses;

reduced allowances; subsistence allowance; designated high-cost geographic areas; and miscellaneous expense definition. After discussion, the Committee had the following comments.

KAR 1-16-15. The Committee found the language in this rule and regulation to be confusing and not well written. The Committee believes that the use of language such as in paragraph (b)(1) could be rewritten to make the language clearer.

Concern. The Committee is concerned that rules and regulations for allowances will not be interpreted uniformly among state agencies. The Committee believes that there may be a more financially prudent way to reimburse state employees completing their jobs which require travel, such as to reimburse employees for actual expenses, rather than to provide set allowances. The Committee is providing copies of this concern to the chairpersons and ranking minority members of the House Appropriations and Senate Ways and Means committees. Additionally, copies are being sent to the President of the Senate and to the Speaker of the House.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applicability; definitions; approved inspector certification program; inspection certification; nondestructive testing of amusement rides; record retention; location of evidence of inspection; procedure for selection of an amusement ride for records audit; location of safety instructions; reporting of amusement ride locations; submitting reports and other documents; and violations, reporting violations to the attorney general, county attorney, or district attorney. After discussion, the Committee had the following comments.

KAR 49-55-3. The Committee believes that the agency should use consistent language in the regulation and in KAR 49-55-4 with respect to the description of levels of certification.

KAR 49-55-6. The Committee believes that this regulation should be rewritten in order to provide for an alternative location for the records to be housed other than at the location of the amusement ride's operation.

Economic Impact. The Committee is providing the agency with a copy of an economic impact statement from the Board of Healing Arts as an example of the type of economic impact statement which should be developed.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensed classification, education requirements; licensed classification, appraisal experience requirement; general classification, education requirements; general classification, appraisal experience requirement; residential classification, education requirements; residential classification, appraisal experience requirement; and uniform standards of professional appraisal practice. After discussion, the Committee had the following comments.

KAR 117-4-2. Please clarify the language in paragraph (a)(2) so that is clear that the required experience includes a minimum of six hours of improved property appraisal experience.

Economic Impact Statement. The Committee believes that if the rules and regulations were developed as a result of a federal audit, this information should be included in the Economic Impact Statement.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (radiologic technologists). After discussion, the Committee had the following comment.

KAR 100-73-2. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether child support payments are due when it is provided information on an applicant that does not contain a Social Security number.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (respiratory therapists). After discussion, the Committee had the following comment.

KAR 100-55-1. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether child support payments are due when it is provided information on an applicant that does not contain a Social Security number.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (naturopathic doctors). After discussion, the Committee had the following comment.

KAR 100-72-2. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines whether the applicant has an arrearage in child support payments when it is provided information on an applicant that does not contain a Social Security number.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications (physical therapists). After discussion, the Committee had the following comment.

KAR 100-29-1. The Committee believes that consideration should be given to the use of a Kansas driver's license number for an application to be complete.

Question. The Committee is curious to learn how the Department of Social and Rehabilitation Services determines the applicant has an arrearage in child support payments when it is provided information on an applicant that does not contain a Social Security number.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education, license renewal (respiratory therapists). After discussion, the Committee had no comment.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount (fees) and fees. After discussion, the Committee had the following comment.

Economic Impact Statement. The Committee commends the agency on the outstanding job it did constructing this Economic Impact Statement.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Sharon Wenger

Approved by Committee on:

February 26, 2010

(Date)

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November 24, 2009

Attorney General Stephen Six
Memorial Hall
120 SW 10th Avenue, 2nd Floor
BUILDING MAIL

Dear Attorney General Six:

Based on a request made by the Joint Committee on Administrative Rules and Regulations, I am writing to seek your input on a regulation promulgated by the Board of Veterinary Examiners.

At its meeting on November 16, 2009, the Joint Committee reviewed changes to KAR 70-7-1. This regulation, promulgated by the Board of Veterinary Examiners, relates to the standards of practice for veterinarians. While many of the amendments were technical in nature, the change found in section (o) was of particular concern to the Committee. Specifically, several Committee members questioned whether the agency has the authority to enact this change. As a result, I was asked to seek your input on whether the agency is given the statutory authority to require a veterinarian to "use appropriate and humane methods of anesthesia, analgesia, and sedation to minimize pain and distress during any procedures on companion animals."

A response may be sent to me at the Legislative Research Department. Please feel free to contact me with any questions. Your attention to this matter is appreciated.

Sincerely,

Raney L. Gilliland
Assistant Director for Research

RLG/jal



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

December 14, 2009

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

Re: **K.A.R. 70-7-1**

Dear Mr. Gilliland:

Attorney General Six has asked me to respond to your letter of November 24, 2009, requesting input as to whether the Board of Veterinary Examiners (Board) has the statutory authority to adopt subsection (o) regarding pain management.

When considering whether an agency has the authority to do what its regulation proposes, we apply the standard that appellate courts use when determining whether an agency has the authority:

Rules or regulations of an administrative agency, to be valid, must be within the statutory authority conferred upon the agency. Those rules or regulations that go beyond the authority authorized, which violate the statute, or are inconsistent with the statutory authority of the agency [are] void. *[T]he primary issue is . . . whether the statutory authority asserted by the agency . . . [is] broad enough to authorize the regulation.*¹

In *State, ex rel., v. Columbia Pictures Corp.*,² the Court concluded that the extent of an agency's power to promulgate regulations is determined by the purpose of the act.³

The Legislature has given to the Board the power "to effectively supervise the practice of veterinary medicine."¹ Such powers "are to be liberally construed in order to accomplish such objective."² Towards that end, the Board has express authority to "establish, by rules and regulations, minimum standards for the practice of veterinary medicine."³

¹*Durrett v. Bryan*, 14 Kan.App.2d 723, 727 (1990), citing *Pork Motel, Corp. v. KDHE*, 234 Kan. 374, 378-79 (1983). Emphasis added. See also *Malone Oil Co. v. KDHE*, 234 Kan. 1066 (1984).

²197 Kan. 448, 454 (1966).

³*Id.* at 454.

¹K.S.A. 2008 Supp. 47-821(b).

²*Id.*

³K.S.A. 2008 Supp. 47-821(a)(17).

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Rules and Regulations
January 4, 2010
Attachment 2

Raney L. Gilliland
Page 2

The regulation, at issue, establishes minimum standards of practice. Subsection (o) establishes a standard for pain management.

As you know, our review process includes two attorneys who review all regulations for legality. Both attorneys concurred that a standard for pain management is within the Board's very broad statutory authority.

I hope this letter adequately responds to your concerns.

Sincerely,

OFFICE OF THE ATTORNEY
GENERAL STEVE SIX



Mary Feighry
Deputy Attorney General

MF:jm

cc: Ken Wilke, Legislative Research Department
Dr. Dirk Hanson, Kansas Board of Veterinary Examiners

PROPOSED BILL NO. _____

By Joint Committee on Administrative Rules and Regulations

AN ACT concerning certain entities licensed by the department of social and rehabilitation services; requiring a criminal history background check on certain employees and applicants for employment.

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

Section 1. (a) (1) No individual, group, association, corporation, local government department or local quasi-government agency which provides services to persons 18 years of age or older in need of services greater than those services provided in a boarding care home which are licensed by the department of social and rehabilitation services pursuant to K.A.R. 30-63-10 et seq., and amendments thereto, shall allow or permit any employee to provide such services unless such employee has successfully completed a state and national criminal history record check as required by this section.

(2) For the purposes of this subsection, the term "boarding care home" shall have the meaning ascribed to it in K.S.A. 39-923 and amendments thereto.

(3) Each entity which is required to be licensed under this subsection shall pay the cost for the state and national criminal history record check required under subsection(b) for each of its employees or applicants for employment who is subject to the requirements of subsection(b).

(4) Each entity which is required to be licensed under this subsection shall make each employee or applicant for employment who is subject to the requirements of subsection(b) available to the department of social and rehabilitation services and any law

enforcement agency for the purpose of obtaining fingerprints and providing any information required for the state and national criminal history record check.

(b) The department of social and rehabilitation services shall require any employee or applicant for employment of an entity licensed pursuant to K.A.R. 30-63-10 et seq., and amendments thereto, who provides services described in subsection(a)(1) to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the employee or applicant for employment has a record of criminal history in this state or other jurisdictions. The department of social and rehabilitation services is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The department of social and rehabilitation services may use the information obtained from fingerprinting and the employee's or applicant's for employment criminal history for purposes of verifying the identification of any employee or applicant and in the official determination of character and fitness of the employee or applicant for any employment by an entity licensed pursuant to K.A.R. 30-63-10 et seq., and amendments thereto, which provides services to persons 18 years of age or older in need of services greater than those services provided in a boarding care home.

(c) Local and state law enforcement officers and agencies shall assist the department of social and rehabilitation services

in taking and processing of fingerprints of applicants who provide services described in subsection(a)(1) and shall release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the department of social and rehabilitation services.

(d) The department of social and rehabilitation services shall fix a fee for fingerprinting of applicants or licensees, or both, as may be required by the department in an amount necessary to reimburse the department for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the SRS criminal background and fingerprinting fund.

(e) There is hereby created in the state treasury the SRS criminal background and fingerprinting fund. All moneys credited to the fund shall be used to pay the Kansas bureau of investigation for the processing of fingerprints and criminal history background checks for the department of social and rehabilitation services. The fund shall be administered by the department of social and rehabilitation services. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or the secretary's authorized designee.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.