

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 2, 2001

Room 514-S—Statehouse

Members Present

Representative Melvin Neufeld, Chairman
Senator Dwayne Umbarger, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U.L. "Rip" Gooch
Senator Chris Steineger
Representative Carl Holmes
Representative Laura L. McClure
Representative Janice Pauls
Representative L. Candy Ruff

Members Excused

Representative Bill Light
Representative Tony Powell

Staff Present

Bill Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Theresa Kieman, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Pat Kahler, Secretary

Others Present

Rick Fleming, Office of the Securities Commissioner

Alan Ford, Office of the Securities Commissioner
Steve Wassom, Office of the Securities Commissioner
Barbara Conant, Kansas Trial Lawyers Association
Steve Williams, Secretary, Department of Wildlife and Parks
Patrick Mulvihill, Kansas Insurance Department
Linda DeCoursey, Kansas Insurance Department
Ron Smith, Kansas Department of Commerce and Housing
Terry Marlin, Kansas Department of Commerce and Housing
Bill Acree, Kansas Department of Commerce and Housing
David Moore, Kansas Department of Commerce and Housing
Ned Webb, Kansas Department of Commerce and Housing
Mike Huffles, Kansas Governmental Consulting
Kevin Barone, Hein/Weir Chartered
Dennis Priest, Department of Social and Rehabilitation Services
Nialson Lee, Department of Social and Rehabilitation Services

Morning Session

The meeting was called to order by Chairman Neufeld at 10:00 a.m.

He welcomed Rick Fleming to speak to the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-3-1, requirements and registration procedures for broker-dealers and agents; 81-3-2, broker-dealer and agent; registration fees; 81-3-3 is being revoked; 81-3-5, sales of securities at financial institutions; 81-4-3 is being revoked; 81-5-7, exchange exemption; 81-14-1, requirements and registration procedures for investment advisers and investment adviser representatives; 81-14-2, investment advisers, investment adviser representatives, and federal covered advisers; registration fees; 81-14-3, investment adviser contracts; 81-14-4, record keeping requirements for investment advisers; 81-14-5, ethical standards, disclosure requirements, and prohibited practices of investment advisers and investment adviser representatives; 81-14-6, electronic filing for investment advisers and investment adviser representatives; 81-14-7, notice filing requirements for federal covered advisers; and 81-14-8, investment adviser representatives; persons employed by or associated with federal covered advisers.

Mr. Fleming introduced Steve Wassom and Allen Ford to the Committee. He distributed a letter to the members from Michael C. Herndon, Certified Financial Planner which was the only comment received concerning the proposed regulations (Attachment 1).

Mr. Fleming explained that the Department regulates two branches of the financial securities industry, the brokerage firms and investment advisement firms. The agency wants to make separate regulations for investment advisement, thus creating Article 14.

When reviewing KAR 81-3-1, requirements and registration procedures for broker-dealers, and agents, a member suggested “may register” should be changed to “shall be registered if” or to consider leaving in the language in stricken subsection (2).

A member asked the conferee to review KAR 81-3-1(h)(1) and KAR 81-14-1(g)(1) to determine whether the Department is making an adoption by reference, and, if so, to include a date certain.

KAR 81-3-2 deals with broker-dealer and agent registration fees. A member asked that the economic impact statement be revised to include the total number of advisers being affected by the proposed regulation and the total amount of that impact on advisers.

KAR 81-14-7, notice filing requirements for federal covered advisers. A member of the staff asked whether the “five days” referred to in subsection (b) should be “five business days.”

When reviewing KAR 81-14-8, investment adviser representatives; persons employed by or associated with federal covered advisers, staff asked the conferee if the intention of the agency was to adopt the most recent version of the federal law by reference.

After answering many informational questions pertaining to the regulations, Mr. Fleming was thanked for the presentation.

Secretary Steve Williams, Department of Wildlife and Parks, was welcomed to speak to the proposed rules and regulations noticed for hearing. KAR 115-13-1, commercial dog training permit; application and general provisions; 115-13-2, non-commercial dog training; 115-13-5, pen-reared, banded birds; recapture; 115-14-2, falconry permits; 115-14-3, falconry permit classes and requirements; 115-14-5, facilities and inspection; 115-14-6, equipment; 115-14-7 is being revoked; 115-14-9, acquisition of raptors; 115-14-10, other provisions; 115-18-5 is being revoked; 115-18-8, retrieval and possession of game animals and migratory game birds; 115-18-9, fur harvester license; unlicensed observer and restrictions; 115-18-14, non-toxic shot; statewide; 115-25-1, game birds; open seasons, bag limits, and possession limits; 115-2-1, amount of fees; 115-2-4, boat fees; and 115-8-4, non-commercial hunting dog training.

KAR 115-13-1, commercial dog training permit; application and general provisions. A member proposed that subsection (c)(3) should not specify “steel shot” since KAR 115-18-14 allows for other non-toxic shot. Mr. Williams agreed and said the regulation would be changed and he would review the other regulations for consistency.

KAR 115-13-5, pen-reared, banded birds; recapture. A member asked the conferee to be consistent in the use of the words “pen-raised” rather than “pen-reared” as in the title of this regulation.

KAR 115-14-10, other provisions. A Committee member asked Mr. Williams to reword or eliminate unnecessary language in subsection (a) because a raptor would not live over 27 years. An error in subsections (n) and (o) was brought to the attention of the conferee. KSA 32-1032 should read KSA 32-1049.

After answering some informational questions for the members, and at the completion of the review, Secretary Williams was thanked for coming before the Committee.

Afternoon Session

Linda DeCoursey and Pat Mulvihill were greeted by the Chairman to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 2). KAR 40-1-37, insurance companies; audited financial reports; filing requirements.

There were no concerns regarding the proposed regulation. Ms. DeCoursey was thanked for the review.

The Committee welcomed Ned Webb to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce and Housing (Attachment 3). KAR 110-4-1, definitions (IMPACT program); 110-7-5, definitions; 110-7-6, audits; 110-7-8, review of proposals; 110-7-9, gifts; gift period; 110-7-10, administration of projects (Community Service Program); and 110-7-1 through 110-7-4 are being revoked.

The Chairman commented that the proposed IMPACT program regulations were good for small town development and appreciated the way the program was implemented. Mr. Webb introduced Bill Acree, Terry Marlin, Ron Smith, and David Moore who, he said, were important members in the development of the program.

Mr. Webb explained that the intent of the proposed regulation KAR 110-4-1 was to allow persons hired back to be eligible to receive workforce training funds if they had been laid off because of an "Act of God." This change will allow Kansas to compete with other states for workforce training funds. The proposed regulation has been in place as a temporary regulation.

There were no other comments about the proposed regulations. The conferee was thanked for the review.

Coming before the Committee was Nialson Lee and Dennis Priest to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-5-64, prior authorization (pharmacy) and 30-6-89, individuals with breast or cervical cancer.

Mr. Lee was asked about the effectiveness of prior authorization programs. A member noted that some larger health plans had abandoned the idea finding that it cost more to deal with prior authorization claims than to simply pay for the service rendered. The member asked the Department to view what other states are doing regarding prior authorization and to convey the information to the Committee.

There was a member-conferee discussion on KAR 30-6-89 regarding the federal allowance for Medicaid to cover breast and cervical cancer treatments for certain women. Previous to the new federal action, funds were available for detection and diagnosis, but not for treatment. There were no concerns for Mr. Priest regarding the regulation.

An expression of thanks was extended to Mr. Lee and Mr. Priest for their presentation.

Dr. Wolff reported on rules and regulations previously reviewed by the Committee and now filed as permanent rules and regulations.

The meeting adjourned at 3:00 p.m.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning audited financial reports. After discussion, the Committee had no comment.

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees, dog training, falconry, and special permits. After discussion, the Committee expressed the following comments:

- KAR 115-13-1. In subsection (c)(3), reference should be to non-toxic shot as defined in KAR 115-18-14 rather than to "steel shot."
- KAR 115-13-2. In subsection (b)(3), reference should be to non-toxic shot as defined in KAR 115-18-14 rather than to "steel shot."
- KAR 115-13-5. The title refers to "pen-reared" while usage throughout has been to "pen-raised." Be consistent.
- KAR 115-14-10. In subsection (a), clarify that the issue is "persons possessing raptors before January 1, 1974" rather than raptors in the

possession of a person before that date. Also, in subsections (n) and (o), the statutory reference should be to KSA 32-1049.

Department of Commerce and Housing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the IMPACT program and the Community Service Program. After discussion, the Committee had no comment. The Committee appreciates the importance and the success of the IMPACT program and the manner in which it has been implemented.

Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensing, exemptions, and investment advisers and investment adviser representatives. After discussion, the Committee expressed the following comments:

- KAR 81-3-1. In the introductory language of this regulation, should the "may" be "shall?" In subsection (b)(1), define "CRD."
- KAR 81-14-2. The economic impact statement prepared for this regulation is incomplete. Rewrite to reflect the aggregate costs of the regulation.
- KAR 81-14-7. In subsection (b), does "five days" mean calendar or business days.

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Medicaid—prior authorization (pharmacy), and scope of services (breast or cervical cancer). After discussion, the Committee had no comment regarding the regulations. However, the Committee requests the Department review the cost effectiveness of prior authorization in light of the fact that some larger health care plans have abandoned the practice as a cost control mechanism.

Prepared by Pat Kahler
Edited by Bill Wolff

Approved by Committee on:

August 7, 2001

(date)