

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 22, 2011  
Room 152-S—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Oletha Faust-Goudeau  
Senator Ralph Ostmeyer  
Senator Allen Schmidt  
Representative Steve Hueber  
Representative Joe Patton  
Representative Jan Pauls

#### Members Absent

Senator Vicki Schmidt, Vice-chairperson  
Senator Tim Owens  
Representative Ed Trimmer  
Representative Caryn Tyson  
Representative Valdenia Winn

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Administrative Assistant

#### Conferees

Amy Thornton, Kansas Department of Wildlife, Parks and Tourism  
Carole Jordan, Department of Commerce  
Vera Van Bruggen, Department on Aging  
Mitzi McFatrach, Executive Director, Kansas Advocates for Better Care  
Janis Lee, Chief Hearing Officer and Executive Director, Court of Tax Appeals  
Jason Watkins, Director of Government Relations, Wichita Metro Chamber of Commerce  
Theresa Schwartz, Kansas Board of Regents  
Nancy Ruoff, Kansas Department of Administration  
Patrick Martin, Kansas Racing and Gaming Commission

Joseph Kroll, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment  
Ann Haught, Division of Workers Compensation, Department of Labor  
Robert Challquist, Department of Revenue  
Chris Wilson, Deputy Secretary and Chief Counsel, Department of Agriculture

### **Others Present**

Chris Harris, Department of Commerce  
Merrill Befort, Department of Commerce  
Jason Glasrud, Department of Commerce  
Barb Conant, Kansas Advocates for Better Care  
Patsy Samson, Kansas Department on Aging  
Patty Brown, Kansas Department on Aging  
Bruce Larkin, Kansas Court of Tax Appeals  
J. Fred Kubik, Kansas Court of Tax Appeals  
Trevor C. Wohlford, Kansas Court of Tax Appeals  
Ted Henry, Kansas Department of Transportation  
Rick Petterson, Kansas Racing and Gaming Commission  
Cheryl Dolejsi, Kansas Racing and Gaming Commission  
Rob Mealy, Kearney and Associates  
Derek Hein, Hein Law Firm  
Michael Schuttloffel, Kansas Catholic Conference

### **MORNING SESSION**

Chairperson Holmes called the meeting to order at 10:00 a.m.

The Chairperson welcomed Amy Thornton, Kansas Department of Wildlife, Parks, and Tourism, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife, Parks, and Tourism. KAR 115-2-3a, revoked; KAR 115-8-13, motorized vehicles and aircraft; authorized operation; and KAR 115-16-3, nuisance bird control permit; application, provisions, and requirements.

Ms. Thornton addressed the blue-green algae notice issued by Wildlife, Parks, and Tourism. She stated it is always present, but the extreme heat has made it more prevalent. Milford Lake has been closed because of it and Perry Lake still is under a warning.

Staff noted that in KAR 115-8-13, the history section needed to be corrected. In KAR 115-16-3, page 3, subsection (l), a Committee member asked whether a definition of a "firearm" is in the rules and regulations. The Committee member stated that there may need to be some clarification in the sentence concerning the use of air rifles and air pistols or a permit would be needed, since those weapons are not in the definition of a firearm. Ms. Thornton stated that the agency would review this for clarification.

Chairperson Holmes asked for Committee action on the minutes of June 1, 2011. *Representative Huebert moved that the minutes be approved as presented; Representative Pauls seconded the motion. The motion carried.*

The Chairperson recognized Carole Jordan, Department of Commerce, to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce. KAR 110-22-1, definitions; KAR 110-22-2, application for tax credit program and student loan repayment program; KAR 110-22-3, determination of eligibility; KAR 110-22-4, appeal process; KAR 110-22-5, resolution by county; intent to participate in student loan repayment program; and KAR 110-22-6, repayment of outstanding student loan balance.

Ms. Jordan stated that these new regulations are the result of SB 198 being passed in the 2011 Legislative Session. The Rural Opportunity Zone Act was enacted to encourage population and economic growth in counties that have been losing population. There are 50 counties that would be eligible and, at this time, 25 have applied to participate in this incentive.

The Committee had concerns about the Commerce Department using the term "tax credit program" since it was noted that the Department of Revenue would be responsible for regulating this part of the program. The Committee members felt that this should be reviewed. The Committee did ask that the Commerce Department supply Committee members with a list of the 25 counties that have applied and are eligible under the program. Ms. Jordan stated that this would be done. Ms. Jordan responded to all questions of a general nature from the Committee members.

Vera Van Bruggen, Department on Aging, was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Department on Aging. KAR 26-42-103, staff development.

Ms. Van Bruggen stated that this proposed rule and regulation was the result of HB 2147 passed by the 2011 Legislature, which provided for changes in the statute that governs Home Plus facilities.

Staff noted that the history section would need to be updated.

Chairperson Holmes welcomed Mitzi McFatrach, Executive Director, Kansas Advocates for Better Care (KABC), to speak on the rule and regulation KAR 26-42-103 ([Attachment 1](#)).

Ms. McFatrach stated that KABC recommends that the agency develop regulations that would include training on common geriatric health conditions, including: dementia, maintenance of continence, end of life, depressing grief and mental health, Parkinson's, and other neurologic diseases, since people enter the facility at one level of care but remain there as their health deteriorates. KABC also recommends requiring Home Plus facilities to add additional staffing when there are more than eight residents. Ms. Van Bruggen stated some of these items were covered in other rules and regulations concerning minimum staffing and patient evaluations. Senator Allen Schmidt requested the record show he would like to have the agency look into this and create stronger language regarding minimum requirements concerning education and staffing needs in Home Plus facilities. He would like to see regulations that would require "As the Home Plus resident needs nursing home care, the nursing home standard of staffing should apply."

Chairperson Holmes welcomed Janice Lee, Chief Hearing Officer and Executive Director, Court of Tax Appeals, to speak to the proposed rules and regulations noticed for hearing by the Kansas Court of Tax Appeals (COTA) ([Attachments 2, 3, and 4](#)). KAR 94-3-2, filing, fees, and forms; and KAR 94-5-8, filing fees.

Ms. Lee stated that COTA began charging fees in 2004 but has never reached the amount required to fully fund this part of the budget. The FY 2012 budget increased the reliance on fee funding and away from general funds.

The Committee had a question in KAR 94-3-2, paragraph (a) (3), "within 14 days," and asked whether they are business days or calendar days. Ms. Lee stated she believed they would be business days, but would get back to the Committee. Ms. Lee stated that on KAR 94-5-8, page 4, (a) (18) "midyear ratios" should be changed to "final year ratio." Also page 5, (b) (3) line 8, should read "at least \$500.00 but less than \$10,000." It was brought to the attention of Ms. Lee that it stated in the bill passed that the Court of Tax Appeals will study its costs and the money raised by the fees increase; and will get back to the Ways and Means Committee and the Appropriations Committee by January 2012 with their findings.

Chairperson Holmes called on Jason Watkins, Director of Government Relations, Wichita Metro Chamber of Commerce, to speak against the proposed rules and regulations noticed for hearing by the Court of Tax Appeals ([Attachment 5](#)).

Mr. Watkins stated the Wichita Metro Chamber of Commerce is opposed to the proposed increase in fees. He stated he did not believe the Legislature would be supportive of a regulation that will diminish economic development.

Written only testimony was received from Suzie Ahlstrand, Greater Wichita Economic Development Coalition, in opposition to the proposed rules and regulations noticed by the Court of Tax Appeals ([Attachment 6](#)).

The Chairperson requested staff draft a letter expressing the Committee's concern about the fees increase to the Chairpersons of the Ways and Means Committee and the Appropriations Committee, the President of the Senate, the Speaker of the House, the Minority Leaders of both the Senate and the House, the Budget Director, the Secretary of the Department of Administration, and members of the Legislative Coordinating Council, along with a copy of the proposed rules and regulations from the Court of Tax Appeals. The Committee requested the Chairperson send a copy of the letter and proposed rules and regulations to the Governor.

Theresa Schwartz, Chief Legal Counsel, Kansas Board of Regents, was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Kansas Board of Regents ([Attachment 7](#)). KAR 88-28-6, fees.

Ms. Schwartz stated this regulation has been approved as a temporary regulation since the statute set fees at these rates as of July 1, 2011. However, she stated, the Board will have to come back next year as the statute authorizing these fees will sunset July 1, 2012.

A Committee member noted the economic impact statement does not show how much the increased fees will generate. This should be done before the public hearing. Ms. Schwartz stated that this would be done.

Chairperson Holmes welcomed Nancy Ruoff, Manager of Payroll Services, Department of Administration, to address the proposed rule and regulation noticed for hearing by the Department of Administration ([Attachment 8](#)). KAR 1-9-5a, limits on state leave payment reserve fund payouts.

Ms. Ruoff stated the purpose of these changes is to align the maximum accumulated vacation and sick leave hours for which the fund can be utilized to the limits established in statutes and administrative regulations.

The Committee requested they be furnished a copy of the agencies that allow over 240 hours of vacation leave to be paid out. Ms. Ruoff stated she would provide the Committee a copy.

The Chairperson recessed the meeting until 1:45 p.m.

## **AFTERNOON SESSION**

Chairperson Holmes reconvened the meeting.

Patrick Martin, Chief Counsel, Kansas Racing and Gaming Commission, was welcomed by the Chairperson and spoke to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-100-2, duty to disclose material and complete information; KAR 112-101-8, certificate renewal; KAR 112-103-2, gaming supplier and non-gaming supplier defined; KAR 112-102-10, certificate renewal application; KAR 112-102-11, license renewal; KAR 112-104-5, standard financial reports; KAR 112-104-6, annual audit, other reports, currency transaction reporting, suspicious transaction reporting; KAR 112-104-42, purchasing; KAR 112-108-23, dice, receipt, storage, inspections, and removal from use; KAR 112-110-1, adoptions by reference; and KAR 112-110-14, procedures for resolving EGM breaks in communication with the central computing system.

Staff noted in KAR 112-101-8, KAR 112-102-10, and KAR 112-103-11, it appears the new regulation amends a previous regulation by extending a date certain in those regulations. Mr. Martin stated they would review the questioned regulations. Mr. Martin stated, in KAR 112-104-5, the agency has received some comments from the public and will be making some changes to clarify calendar year and dates. Staff noted in KAR 112-104-6, page 6, subsection (n) there needs to be an adoption by reference as of a date certain for 31 C.F.R. Part 103. KAR 112-104-42, page 5, the term "related parties" is used; staff noted that a definition for the term needs to be provided. A Committee member had a question concerning the term "fair market value" as used on page 2, (c)(4), (E) and asked where a definition was included. Mr. Martin stated he would check and make sure the term is defined.

Chairperson Holmes recognized Joseph Kroll, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment, to address the proposed rules and regulations noticed for hearing by the Department of Health and Environment. KAR 28-34-126, definitions; KAR 28-34-127, application process; KAR 28-34-129, terms of a license; KAR 28-34-130, renewals, amendments; KAR 28-34-131, operation of the facility; KAR 28-34-132, staff requirements; KAR 28-34-133, facility environmental standards; KAR 28-34-134, health and safety requirements; KAR 28-34-135, equipment, supplies, drugs and medications; KAR 28-34-136, ancillary services; KAR 28-34-137, patient screening and evaluation; KAR 28-34-138, abortion procedure; KAR 28-34-139, recovery procedures, discharge; KAR 28-34-140, transfers; KAR 28-34-141, follow-up contact and care; KAR 28-34-142, risk management; KAR 28-34-143, reporting requirements; and KAR 28-34-144, records.

Mr. Kroll stated these rules and regulations were approved as temporary regulations on June 30, 2011. These rules and regulations incorporate the provisions of 2011 House Sub. for SB 36.

A Committee member noted, in KAR 28-34-126, the definitions need to be alphabetized on page 2, (k) and (l). In KAR 28-34-132, page 2, (d), staff questioned whether a word was missing after “nursing” which would clarify the statement. Mr. Kroll stated that this should be “nursing staff” and it would be corrected. A Committee member noted that in KAR 28-34-135, page 3, (i) that the term should be “required” calibration rather than “appropriate” calibration. On page 6, (o), staff stated that the term “registered” does not appear in the Pharmacy Act or regulations. Mr. Kroll stated that they would revisit this for correction.

A Committee member stated, in KAR 28-34-138 (2) the ultrasound be provided to the patient before the written consent is signed; and in KAR 28-34-142, Page 2, next to the last line, the term “subparagraph” should be used rather than “paragraph.”

Anne Haught, Division of Workers Compensation, Department of Labor, was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 51-7-8, computation of compensation.

Ms. Haught stated that the proposed change to the regulation is the result of HB 2134, passed during the 2011 Legislature Session. The language now clarifies not only the loss of a member but the loss of use of a member in determining functional impairment and permanent partial general disability.

In KAR 51-7-8, (a)(1), staff noted, the word “of” should be added so that the sentence reads “suffers a loss ‘of’ or the loss of use to a” so the language is the same as the statute. This would also be true for paragraph (B). Ms. Haught stated that this would be corrected.

Chairperson Holmes recognized Robert Challquist, Department of Revenue, to address the proposed rule and regulation noticed for hearing by the Department of Revenue. KAR 92-12-66a, abatement of final tax liabilities.

Mr. Challquist stated the proposed rule and regulations is the result of legislation passed during the 2011 Legislative Session clarifying that the reports generated by the Secretary of Revenue concerning abatement tax liability are available for public inspection.

There were no comments or questions from the Committee.

The Chairperson welcomed Chris Wilson, Deputy Secretary and Chief Counsel, Department of Agriculture, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-3-49, good manufacturing practices; adoption by reference; and KAR 4-3-51, prohibited feeding stuffs; adoption by reference ([Attachment 9](#)).

Ms. Wilson stated these regulations had come before the Committee and the Committee had made two recommendations. The recommended changes were made and the Department determined an additional 30 day comment period should be given. That period closes July 26, 2011.

Staff noted in KAR 4-3-51 (1 ) the words “and this Act” should be added at the end of the sentence.

The Chairperson announced the next meeting would be August 29, 2011. The meeting was adjourned at 3:30 p.m.

## COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning motorized vehicles and aircraft, authorized operations; nuisance bird control permit, application, provisions, and requirements; and revocation. After discussion, the Committee had the following comments.

KAR 115-8-13. Please update the statutory reference in the text of the regulation to KSA 8-15,109 to reflect the statute's location in the 2010 Supplements.

KAR 115-16-3. The Committee suggests that the agency review subsections (j) and (l) to determine whether they are in conflict. Would a person using an air rifle be required to have a nuisance bird control permit?

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; application for tax credit program and student loan repayment program; determination of eligibility; appeal process; resolution by county, intent to participate in student loan repayment program; repayment of outstanding student loan balance. After discussion, the Committee had the following comments.

KAR 100-22-1. The Committee would like to know the location of the actual eligibility requirements for participation in both the student loan repayment program and the tax credit program.

KAR 100-22-2. The Committee is concerned that this regulation addresses both the student loan repayment program and the tax credit program and suggests to the agency that there be separate rules and regulations for each program.

Request. The Committee requests that a list of participating counties be prepared and provided to the Kansas Legislative Research Department for distribution to Committee members.

**Kansas Department on Aging.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning staff development. After discussion, the Committee had the following suggestion.

Suggestion. The Committee requests that the agency consider the promulgation of a rule and regulation that requires an increase in staffing levels to at least that required for a nursing home in facilities which otherwise meet the Home Plus criteria if the needs of the residents increase to nursing home eligibility levels.

**Kansas Court of Tax Appeals.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning filing, fee, and form; filing fees. After discussion, the Committee had the following comments.

KAR 94-3-2. The Committee suggests that the agency make plural the word "form" in the title of this regulation. In addition, the Committee suggests in paragraph (a)(3) that there be a clarification as to the number of days by the addition of the word "business" or "calendar" in order to clarify for an applicant the time frame to correct a deficiency in writing.

KAR 94-5-8. In paragraph (a)(18), the Committee suggests the replacement of “mid-year” with “final.” In paragraph (b)(3), there appears to be an extra “1” after the number “\$10,000” and the Committee suggests its removal.

Letter of Concern. The Committee intends to communicate with a number of individuals its concern about the extent of fee increases with the hope that the Legislature will consider this at the beginning of the 2012 Legislative Session.

**Kansas Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning fees. After discussion, the Committee had the following comment.

Economic Impact Statement. The Committee believes that the Economic Impact Statement is not complete and should reflect the actual dollar impact to the regulated entities.

**Kansas Department of Administration.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning limits on state leave payment reserve fund payouts. After discussion, the Committee had the following request.

Request. The Committee would like to receive the list of agencies that have authority or policy to pay new retirees for more than 240 hours of accrued vacation leave when they retire.

**Kansas Racing and Gaming Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning duty to disclose material and complete information; certificate renewal; gaming supplier and non-gaming supplier defined; certificate renewal application; license renewal; standard financial reports; annual audit, other reports, currency transaction reporting, suspicious transaction reporting; purchasing; dice, receipt, storage, inspections, and removal from use; adoptions by reference; and procedures for resolving EGM breaks in communication with the central computing system. After discussion, the Committee had the following comments.

KAR 112-101-8. The Committee suggests a link to KAR 112-101-7 be placed in this regulation and that KAR 112-101-7 be amended accordingly so that there is no confusion regarding the expiration date for the certificate and that an extension of the expiration date is allowed for a period of up to six months. Please review these two rules and regulations and also the pairs of regulations KAR 112-102-10 and KAR 112-102-9 and KAR 112-103-11 and KAR 112-103-10 for the same issue.

KAR 112-104-6. In subsection (n), the Committee is concerned with whether 31 CFR Part 103 has been adopted properly by reference. Please provide a cross reference to the regulation in which 31 CFR Part 103 has been adopted by reference or add the proper adoption by reference language, including a date certain, in this regulation.

KAR 112-104-42. The Committee believe there would be benefit to defining the terms “fair market value” used in paragraph (c)(4)(E) and “related party” used in subsection (d).



**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; application process; terms of a license; renewals, amendments; operation of the facility; staff requirements; facility environmental standards; health and safety requirements; equipment, supplies, drugs and medications; ancillary services; patient screening and evaluation; abortion procedure; recovery procedures, discharge; transfers; follow-up contact and care; risk management; and reporting requirements. After discussion, the Committee had the following comments.

KAR 28-34-126. The Committee requests that the definitions be placed in alphabetical order. See subsections (k) and (l).

KAR 28-34-132. In subsection (d), the Committee believes that there is either a punctuation error or a word missing around the phrase “each nursing.”

KAR 28-34-135. In subsection (i), the Committee believes that the word “appropriate” should be replaced by the word “required.” In subsection (o), the Committee questions the accuracy of the use of the phrase “facility that is registered by” in the context of regulation by the Kansas Board of Pharmacy.

KAR 28-34-138. The Committee suggests that the rule and regulation be amended to require the ultrasound before the consent to the abortion is obtained.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning computation of compensation. After discussion, the Committee had the following comment.

KAR 51-7-8. In paragraphs (b)(1) and (b)(1)(B), the Committee suggests the phrase be amended to say “If a loss of or the loss of use of...”

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning abatement of final tax liabilities. After discussion, the Committee had no comment.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning good manufacturing practices, adoption by reference; prohibited feeding stuffs, adoption by reference. After discussion, the Committee had the following comment.

KAR 4-3-51. The Committee suggests that the reference in paragraphs (a)(11) and (a)(13) to KSA 65-664 be amended to include reference to the Commercial Feeding Stuffs Law.

Prepared by Judy Glasgow  
Edited by Raney Gilliland and Jill Shelley

Approved by the Committee on:

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August 29, 2011  
(Date)