

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2027

By Committee on Judiciary

1-18

1 AN ACT concerning the rules and regulations filing act; amending
2 K.S.A. 77-438 and K.S.A. 2010 Supp. 77-415, 77-421 and 77-436
3 and repealing the existing sections; also repealing K.S.A. 2010
4 Supp. 77-421a.
5

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

7 Section 1. K.S.A. 2010 Supp. 77-415 is hereby amended to read as
8 follows: 77-415. (a) *K.S.A. 77-415 through 77-438, and amendments*
9 *thereto, shall be known and may be cited as the Kansas rules and*
10 *regulations filing act.*

11 (b)(1) *Unless otherwise provided by statute or constitutional*
12 *provision, each rule and regulation issued or adopted by a state agency*
13 *shall comply with the requirements of the Kansas rules and regulations*
14 *filing act. Except as provided in this section, any standard,*
15 *requirement or other policy of general application may be given*
16 *binding legal effect only if it has complied with the requirements of the*
17 *Kansas rules and regulations filing act.*

18 (2) *Notwithstanding the provisions of this section:*

19 (A) *An agency may bind parties, establish policies, and interpret*
20 *statutes or regulations by order in an adjudication pursuant to*
21 ~~*procedures provided under the Kansas administrative procedures*~~
22 ~~*act or other procedures required by law except that no nonparty to an*~~
23 ~~*adjudication may be adversely affected by an order unless the order is*~~
24 ~~*readily available to the public, except that such order shall not be*~~
25 ~~*used as precedent in any subsequent adjudication against a person*~~
26 ~~*who was not a party to the original adjudication unless the order*~~
27 ~~*is:*~~

28 (i) **Designated by the agency as precedent;**
29 **[(ii) not overruled by a court or later adjudication; and]**
30 **[(iii) disseminated to the public in one of the following ways:]**
31 ~~**(ii) listed**~~ **[(a) Inclusion] in a publicly available index,**

- 1 **maintained by the agency and published on its website, of all**
2 **orders designated as precedent;**
3 ~~**(iii) published [(b) publication] by posting in full on an**~~
4 ~~**agency website in a format capable of being searched by key terms;**~~
5 ~~**[or]**~~
6 ~~**(iv) [(c) being] made available to the public in such other**~~
7 ~~**manner as may be prescribed by the secretary of state; and**~~
8 ~~**(v) not overruled by a court or later adjudication.**~~
9 *(B) Any statement of agency policy may be treated as binding*
10 *within the agency if such statement of policy is directed to:*
11 *(i) Agency personnel relating to the performance of their duties.*
12 *(ii) The internal management of or organization of the agency.*
13 *No such statement of agency policy listed in clauses (i) and (ii) of*
14 *this subparagraph may be relied on to bind the general public.*
15 *(C) An agency may provide forms, the content or substantive*
16 *requirements of which are prescribed by rule and regulation or statute,*
17 *except that no such form may give rise to any legal right or duty or be*
18 *treated as authority for any standard, requirement or policy reflected*
19 *therein.*
20 *(D) An agency may provide guidance or information to the public,*
21 *describing any agency policy or statutory or regulatory requirement*
22 *except that no such guidance or information may give rise to any legal*
23 *right or duty or be treated as authority for any standard, requirement*
24 *or policy reflected therein.*
25 *(E) None of the following shall be subject to the Kansas rules and*
26 *regulations filing act:*
27 *(i) Any policy relating to the curriculum of a public educational*
28 *institution or to the administration, conduct, discipline, or graduation*
29 *of students from such institution.*
30 *(ii) Any parking and traffic regulations of any state educational*
31 *institution under the control and supervision of the state board of*
32 *regents.*
33 *(iii) Any rule and regulation relating to the emergency or security*
34 *procedures of a correctional institution, as defined in subsection (d) of*
35 *K.S.A. 75-5202, and amendments thereto.*
36 *(iv) Any order issued by the secretary of corrections or any*
37 *warden of a correctional institution under K.S.A. 75-5256, and*
38 *amendments thereto.*
39 *(F) When a statute authorizing an agency to issue rules and*

1 *regulations or take other action specifies the procedures for doing so,*
2 *those procedures shall apply instead of the procedures in the Kansas*
3 *rules and regulations filing act.*

4 (c) As used in ~~K.S.A. 77-415 through 77-437~~ *the Kansas rules*
5 *and regulations filing act*, and amendments thereto, unless the context
6 clearly requires otherwise:

7 ~~(a)~~(1) "Board" means the state rules and regulations board
8 established under the provisions of K.S.A. 77-423, and amendments
9 thereto.

10 ~~(b)~~(2) "Environmental rule and regulation" means:

11 ~~(1)~~(A) A rule and regulation adopted by the secretary of
12 agriculture, the secretary of health and environment or the state
13 corporation commission, which has as a primary purpose the protection
14 of the environment; or

15 ~~(2)~~(B) a rule and regulation adopted by the secretary of wildlife
16 and parks concerning threatened or endangered species of wildlife as
17 defined in K.S.A. 32-958, and amendments thereto.

18 ~~(c)~~(3) "Person" means *an individual*, firm, association,
19 organization, partnership, business trust, corporation ~~or company~~,
20 *company or any other legal or commercial entity.*

21 ~~(d)~~ ~~(1)~~(4) "Rule and regulation," "rule," *and* "regulation" ~~and~~
22 ~~words of like effect mean a standard, statement of policy or general~~
23 ~~order, including amendments or revocations thereof, of general~~
24 ~~application and having the effect of law, issued or adopted by a state~~
25 ~~agency to implement or interpret legislation enforced or administered~~
26 ~~by such state agency or to govern the organization or procedure of such~~
27 ~~state agency. Every rule and regulation adopted by a state agency to~~
28 ~~govern its enforcement or administration of legislation shall be adopted~~
29 ~~by the state agency and filed as a rule and regulation as provided in this~~
30 ~~act. The fact that a statement of policy or an interpretation of a statute is~~
31 ~~made in the decision of a case or in a state agency decision upon or~~
32 ~~disposition of a particular matter as applied to a specific set of facts~~
33 ~~does not render the same a rule and regulation within the meaning of~~
34 ~~the foregoing definition, nor shall it constitute specific adoption thereof~~
35 ~~by the state agency so as to be required to be filed.~~

36 ~~(2)~~ A rule and regulation as herein defined shall not include any
37 rule and regulation which:

38 ~~(A)~~ Relates to the internal management or organization of the
39 agency and does not affect private rights or interest;

- 1 ~~(B) is an order directed to specifically named persons or to a group~~
2 ~~which does not constitute a general class and the order is served on the~~
3 ~~person or persons to whom it is directed by appropriate means. The fact~~
4 ~~that the named person serves a group of unnamed persons who will be~~
5 ~~affected does not make such an order a rule and regulation;~~
6 ~~(C) relates to the use of highways and is made known to the public~~
7 ~~by means of signs or signals;~~
8 ~~(D) relates to the construction and maintenance of highways or~~
9 ~~bridges or the laying out or relocation of a highway other than bidding~~
10 ~~procedures or the management and regulation of rest areas;~~
11 ~~(E) relates to the curriculum of public educational institutions or to~~
12 ~~the administration, conduct, discipline, or graduation of students from~~
13 ~~such institutions or relates to parking and traffic regulations of state~~
14 ~~educational institutions under the control and supervision of the state~~
15 ~~board of regents;~~
16 ~~(F) relates to the emergency or security procedures of a~~
17 ~~correctional institution, as defined in subsection (d) of K.S.A. 75-5202,~~
18 ~~and amendments thereto;~~
19 ~~(G) relates to the use of facilities by public libraries;~~
20 ~~(H) relates to military or naval affairs other than the use of~~
21 ~~armories;~~
22 ~~(I) relates to the form and content of reports, records or accounts~~
23 ~~of state, county or municipal officers, institutions, or agencies;~~
24 ~~(J) relates to expenditures by state agencies for the purchase of~~
25 ~~materials, equipment, or supplies by or for state agencies, or for the~~
26 ~~printing or duplicating of materials for state agencies;~~
27 ~~(K) establishes personnel standards, job classifications, or job~~
28 ~~ranges for state employees who are in the classified civil service;~~
29 ~~(L) fixes or approves rates, prices, or charges, or rates, joint rates,~~
30 ~~fares, tolls, charges, rules, regulations, classifications or schedules of~~
31 ~~common carriers or public utilities subject to the jurisdiction of the~~
32 ~~state corporation commission, except when a statute specifically~~
33 ~~requires the same to be fixed by rule and regulation;~~
34 ~~(M) determines the valuation of securities held by insurance~~
35 ~~companies;~~
36 ~~(N) is a statistical plan relating to the administration of rate~~
37 ~~regulation laws applicable to casualty insurance or to fire and allied~~
38 ~~lines insurance;~~
39 ~~(O) is a form, the content or substantive requirements of which are~~

1 ~~prescribed by rule and regulation or statute;~~
2 ~~(P) is a pamphlet or other explanatory material not intended or~~
3 ~~designed as interpretation of legislation enforced or adopted by a state~~
4 ~~agency but is merely informational in nature;~~
5 ~~(Q) establishes seasons and fixes bag, creel, possession, size or~~
6 ~~length limits for the taking or possession of wildlife, if such seasons~~
7 ~~and limits are made known to the public by other means; or~~
8 ~~(R) establishes records retention and disposition schedules for any~~
9 ~~or all state agencies means a standard, requirement or other policy of~~
10 ~~general application that has the force and effect of law, including~~
11 ~~amendments or revocations thereof, issued or adopted by a state~~
12 ~~agency to implement or interpret legislation.~~
13 ~~(e)(5) "Rulemaking" shall have the meaning ascribed to it in~~
14 ~~K.S.A. 77-602, and amendments thereto.~~
15 ~~(f)(6) "Small employer" means any person, firm, corporation,~~
16 ~~partnership or association that employs not more than 50 employees,~~
17 ~~the majority of whom are employed within this state.~~
18 ~~(g)(7) "State agency" means any officer, department, bureau,~~
19 ~~division, board, authority, agency, commission or institution of this~~
20 ~~state, except the judicial and legislative branches, which is authorized~~
21 ~~by law to promulgate rules and regulations concerning the~~
22 ~~administration, enforcement or interpretation of any law of this state.~~
23 Sec. 2. K.S.A. 2010 Supp. 77-421 is hereby amended to read as
24 follows: 77-421. (a) (1) Except as provided by subsection (a)(2),
25 subsection (a)(3) or subsection (a)(4), prior to the adoption of any
26 permanent rule and regulation or any temporary rule and regulation
27 which is required to be adopted as a temporary rule and regulation in
28 order to comply with the requirements of the statute authorizing the
29 same and after any such rule and regulation has been approved by the
30 secretary of administration and the attorney general, the adopting state
31 agency shall give at least 60 days' notice of its intended action in the
32 Kansas register and to the secretary of state and to the joint committee
33 on administrative rules and regulations established by K.S.A. 77-436,
34 and amendments thereto. The notice shall be provided to the secretary
35 of state and to the chairperson, vice chairperson, ranking minority
36 member of the joint committee and legislative research department and
37 shall be published in the Kansas register. A complete copy of all
38 proposed rules and regulations and the complete economic impact
39 statement required by K.S.A. 77-416, and amendments thereto, shall

1 accompany the notice sent to the secretary of state. The notice shall
2 contain:

3 (A) A summary of the substance of the proposed rules and
4 regulations;

5 (B) a summary of the economic impact statement indicating the
6 estimated economic impact on governmental agencies or units, persons
7 subject to the proposed rules and regulations and the general public;

8 (C) a summary of the environmental benefit statement, if
9 applicable, indicating the need for the proposed rules and regulations;

10 (D) the address where a complete copy of the proposed rules and
11 regulations, the complete economic impact statement, the
12 environmental benefit statement, if applicable, required by K.S.A. 77-
13 416, and amendments thereto, may be obtained;

14 (E) the time and place of the public hearing to be held; the manner
15 in which interested parties may present their views; and

16 (F) a specific statement that the period of 60 days' notice
17 constitutes a public comment period for the purpose of receiving
18 written public comments on the proposed rules and regulations and the
19 address where such comments may be submitted to the state agency.
20 Publication of such notice in the Kansas register shall constitute notice
21 to all parties affected by the rules and regulations.

22 (2) Prior to adopting any rule and regulation which establishes
23 seasons and fixes bag, creel, possession, size or length limits for the
24 taking or possession of wildlife and after such rule and regulation has
25 been approved by the secretary of administration and the attorney
26 general, the secretary of the department of wildlife and parks shall give
27 at least 30 days' notice of its intended action in the Kansas register and
28 to the secretary of state and to the joint committee on administrative
29 rules and regulations created pursuant to K.S.A. 77-436, and
30 amendments thereto. All other provisions of subsection (a)(1) shall
31 apply to such rules and regulations, except that the statement required
32 by subsection (a)(1)(E) shall state that the period of 30 days' notice
33 constitutes a public comment period on such rules and regulations.

34 (3) Prior to adopting any rule and regulation which establishes any
35 permanent prior authorization on a prescription-only drug pursuant to
36 K.S.A. 39-7,120, and amendments thereto, or which concerns coverage
37 or reimbursement for pharmaceuticals under the pharmacy program of
38 the state medicaid plan, and after such rule and regulation has been
39 approved by the secretary of administration and the attorney general,

1 the Kansas health policy authority shall give at least 30 days' notice of
2 its intended action in the Kansas register and to the secretary of state
3 and to the joint committee on administrative rules and regulations
4 created pursuant to K.S.A. 77-436, and amendments thereto. All other
5 provisions of subsection (a)(1) shall apply to such rules and
6 regulations, except that the statement required by subsection (a)(1)(E)
7 shall state that the period of 30 days' notice constitutes a public
8 comment period on such rules and regulations.

9 (4) Prior to adopting any rule and regulation pursuant to
10 subsection (c), the state *agency* shall give at least 30 days' notice of its
11 intended action in the Kansas register and to the secretary of state and
12 to the joint committee on administrative rules and regulations created
13 pursuant to K.S.A. 77-436, and amendments thereto. All other
14 provisions of subsection (a)(1) shall apply to such rules and
15 regulations, except that the statement required by subsection (a)(1)(E)
16 shall state that the period of notice constitutes a public comment period
17 on such rules and regulations.

18 (b) (1) On the date of the hearing, all interested parties shall be
19 given reasonable opportunity to present their views or arguments on
20 adoption of the rule and regulation, either orally or in writing. At the
21 time it adopts or amends a rule and regulation, the state agency shall
22 prepare a concise statement of the principal reasons for adopting the
23 rule and regulation or amendment thereto, including:

24 (A) The agency's reasons for not accepting substantial arguments
25 made in testimony and comments; and

26 (B) the reasons for any substantial change between the text of the
27 proposed adopted or amended rule and regulation contained in the
28 published notice of the proposed adoption or amendment of the rule
29 and regulation and the text of the rule and regulation as finally adopted.

30 (2) Whenever a state agency is required by any other statute to
31 give notice and hold a hearing before adopting, amending, reviving or
32 revoking a rule and regulation, the state agency, in lieu of following the
33 requirements or statutory procedure set out in such other law, may give
34 notice and hold hearings on proposed rules and regulations in the
35 manner prescribed by this section.

36 (3) Notwithstanding the other provisions of this section, the
37 Kansas parole board and the secretary of corrections, may give notice
38 or an opportunity to be heard to any inmate in the custody of the
39 secretary of corrections with regard to the adoption of any rule and

1 regulation, but the secretary shall not be required to give such notice or
2 opportunity.

3 (c) (1) The agency shall initiate new rulemaking proceedings
4 under this act, if a state agency proposes to adopt a final rule and
5 regulation that:

6 (A) Differs in subject matter or effect in any material respect from
7 the rule and regulation as originally proposed; and

8 (B) is not a logical outgrowth of the rule and regulation as
9 originally proposed.

10 (2) In accordance with subsection (a), the period for public
11 comment required by K.S.A. 77-421, and amendments thereto, may be
12 shortened to not less than 30 days.

13 (3) For the purposes of this provision, a rule and regulation is not
14 the logical outgrowth of the rule and regulation as originally proposed
15 if a person affected by the final rule and regulation was not put on
16 notice that such person's interests were affected in the rulemaking.

17 (d) When, pursuant to this or any other statute, a state agency
18 holds a hearing on the adoption of a proposed rule and regulation, the
19 agency shall cause written minutes or other records, including a record
20 maintained on sound recording tape or on any electronically accessed
21 media or any combination of written or electronically accessed media
22 records of the hearing to be made. If the proposed rule and regulation is
23 adopted and becomes effective, the state agency shall maintain, for not
24 less than three years after its effective date, such minutes or other
25 records, together with any recording, transcript or other record made of
26 the hearing and a list of all persons who appeared at the hearing and
27 who they represented, any written testimony presented at the hearing
28 and any written comments submitted during the public comment
29 period.

30 (e) No rule and regulation shall be adopted by a board,
31 commission, authority or other similar body except at a meeting which
32 is open to the public and notwithstanding any other provision of law to
33 the contrary, no rule and regulation shall be adopted by a board,
34 commission, authority or other similar body unless it receives approval
35 by roll call vote of a majority of the total membership thereof.

36 Sec. 3. K.S.A. 2010 Supp. 77-436 is hereby amended to read as
37 follows: 77-436. (a) There is hereby established a joint committee on
38 administrative rules and regulations which shall consist of five senators
39 and seven members of the house of representatives. The five senator

1 members shall be appointed as follows: Three by the committee on
2 organization, calendar and rules and two by the minority leader of the
3 senate. The seven representative members shall be appointed as
4 follows: Four by the speaker of the house of representatives and three
5 by the minority leader of the house of representatives. The committee
6 on organization, calendar and rules shall designate a senator member to
7 be chairperson or vice-chairperson of the joint committee as provided
8 in this section. The speaker of the house of representatives shall
9 designate a representative member to be chairperson or vice-
10 chairperson of the joint committee as provided in this section.

11 (b) A quorum of the joint committee on administrative rules and
12 regulations shall be seven. All actions of the committee may be taken
13 by a majority of those present when there is a quorum. In odd-
14 numbered years the chairperson of the joint committee shall be the
15 designated member of the house of representatives from the convening
16 of the regular session in that year until the convening of the regular
17 session in the next ensuing year. In even-numbered years the
18 chairperson of the joint committee shall be the designated member of
19 the senate from the convening of the regular session of that year until
20 the convening of the regular session of the next ensuing year. The vice-
21 chairperson shall exercise all of the powers of the chairperson in the
22 absence of the chairperson.

23 (c) All proposed rules and regulations shall be reviewed by the
24 joint committee on administrative rules and regulations during the
25 public comment period required by K.S.A. 77-421, and amendments
26 thereto. ~~All proposed rules and regulations specifically excluded from~~
27 ~~the definition of rule and regulation under subsection (c) of K.S.A. 77-~~
28 ~~415, and amendments thereto, shall be subject to review by the joint~~
29 ~~committee.~~ The committee may introduce such legislation as it deems
30 necessary in performing its functions of reviewing administrative rules
31 and regulations ~~and agency forms.~~

32 (d) All rules and regulations filed each year in the office of
33 secretary of state ~~and all rules and regulations specifically excluded~~
34 ~~from the definition of rule and regulation under subsection (c) of~~
35 ~~K.S.A. 77-415, and amendments thereto,~~ shall be subject to review by
36 the joint committee. The committee may introduce such legislation as it
37 deems necessary in performing its functions of reviewing
38 administrative rules and regulations ~~and agency forms.~~

39 (e) The joint committee shall meet on call of the chairperson as

1 authorized by the legislative coordinating council. All such meetings
2 shall be held in Topeka, unless authorized to be held in a different place
3 by the legislative coordinating council. Members of the joint committee
4 shall receive compensation and travel expenses and subsistence
5 expenses or allowances as provided in K.S.A. 75-3212, and
6 amendments thereto, when attending meetings of such committee
7 authorized by the legislative coordinating council.

8 (f) Amounts paid under authority of this section shall be paid from
9 appropriations for legislative expense and vouchers therefor shall be
10 prepared by the director of legislative administrative services and
11 approved by the chairperson or vice-chairperson of the legislative
12 coordinating council.

13 Sec. 4. K.S.A. 77-438 is hereby amended to read as follows: 77-
14 438. ~~K.S.A. 77-415 to 77-437, inclusive, and acts amendatory thereof~~
15 ~~or supplemental thereto shall be known and may be cited as the rules~~
16 ~~and regulations filing act.~~ (a)(1) *A state agency may issue a guidance*
17 *document without following the procedures set forth in this act for the*
18 *adoption of rules and regulations.*

19 (2) *For the purposes of this section, “guidance document” means*
20 *a record of general applicability that:*

21 (A) *Is designated by a state agency as a guidance document;*

22 (B) *lacks the force of law; and*

23 (C) *states:*

24 (i) *The agency’s current approach to, or interpretation of,*
25 *law; or*

26 (ii) *general statements of policy that describe how and when*
27 *the agency will exercise discretionary functions.*

28 (b) *A guidance document may contain binding instructions to*
29 *state agency staff members except officers who preside in adjudicatory*
30 *proceedings.*

31 (c) *If a state agency proposes to act in an adjudication at variance*
32 *with a position expressed in a guidance document, the state agency*
33 *shall provide a reasonable explanation for the variance. If an affected*
34 *person in an adjudication claims to have reasonably relied on the*
35 *agency’s position, the state agency’s explanation for the variance shall*
36 *include a reasonable justification for the agency’s conclusion that the*
37 *need for the variance outweighs the affected person’s reliance interests.*

38 (d) *Each state agency shall:*

39 (1) *Maintain an index of all of its currently effective guidance*

1 *documents;*

2 *(2) publish the index on its website;*

3 *(3) make all guidance documents available to the public; and*

4 *(4) file the index in the manner prescribed by the secretary of*
5 *state.*

6 *(e) A guidance document may be considered by a presiding officer*
7 *or agency head in an agency adjudication but such guidance document*
8 *shall not bind any party, the presiding officer or the agency head.*

9 **[(f) Any agency that issues a guidance document shall provide a**
10 **copy of such guidance document to the joint committee on**
11 **administrative rules and regulations.]**

12 Sec. 5. K.S.A. 77-438 and K.S.A. 2010 Supp. 77-415, 77-421, 77-
13 421a and 77-436 are hereby repealed.

14 Sec. 6. This act shall take effect and be in force from and after its
15 publication in the statute book.