

HOUSE BILL No. 2027

By Committee on Judiciary

1-18

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

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

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

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

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

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

25 (i) **Designated by the agency as precedent;**

26 [(ii) **not overruled by a court or later adjudication; and]**

27 [(iii) **disseminated to the public in one of the following ways:]**

28 ~~(ii) listed [(a) Inclusion]~~ **in a publicly available index, maintained by**
29 **the agency and published on its website, of all orders designated as**
30 **precedent;**

31 ~~(iii) published [(b) publication]~~ **by posting in full on an agency**
32 **website in a format capable of being searched by key terms; [or]**

1 ~~(iv)~~ [(c) being] made available to the public in such other manner as
2 may be prescribed by the secretary of state; and
3 ~~(v) not overruled by a court or later adjudication.~~

4 (B) Any statement of agency policy may be treated as binding within the
5 agency if such statement of policy is directed to:

6 (i) Agency personnel relating to the performance of their duties.

7 (ii) The internal management of or organization of the agency.

8 No such statement of agency policy listed in clauses (i) and (ii) of this
9 subparagraph may be relied on to bind the general public.

10 (C) An agency may provide forms, the content or substantive
11 requirements of which are prescribed by rule and regulation or statute, except
12 that no such form may give rise to any legal right or duty or be treated as
13 authority for any standard, requirement or policy reflected therein.

14 (D) An agency may provide guidance or information to the public,
15 describing any agency policy or statutory or regulatory requirement except
16 that no such guidance or information may give rise to any legal right or duty
17 or be treated as authority for any standard, requirement or policy reflected
18 therein.

19 (E) None of the following shall be subject to the Kansas rules and
20 regulations filing act:

21 (i) Any policy relating to the curriculum of a public educational
22 institution or to the administration, conduct, discipline, or graduation of
23 students from such institution.

24 (ii) Any parking and traffic regulations of any state educational
25 institution under the control and supervision of the state board of regents.

26 (iii) Any rule and regulation relating to the emergency or security
27 procedures of a correctional institution, as defined in subsection (d) of K.S.A.
28 75-5202, and amendments thereto.

29 (iv) Any order issued by the secretary of corrections or any warden of a
30 correctional institution under K.S.A. 75-5256, and amendments thereto.

31 (F) When a statute authorizing an agency to issue rules and regulations
32 or take other action specifies the procedures for doing so, those procedures
33 shall apply instead of the procedures in the Kansas rules and regulations filing
34 act.

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

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

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

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

1 (2)(B) a rule and regulation adopted by the secretary of wildlife and parks
2 concerning threatened or endangered species of wildlife as defined in K.S.A.
3 32-958, and amendments thereto.

4 (e)(3) "Person" means *an individual*, firm, association, organization,
5 partnership, business trust, corporation ~~or company~~, *company or any other*
6 *legal or commercial entity*.

7 (d)(1)(4) "Rule and regulation," "rule," *and* "regulation" ~~and words of~~
8 ~~like effect mean a standard, statement of policy or general order, including~~
9 ~~amendments or revocations thereof, of general application and having the~~
10 ~~effect of law, issued or adopted by a state agency to implement or interpret~~
11 ~~legislation enforced or administered by such state agency or to govern the~~
12 ~~organization or procedure of such state agency. Every rule and regulation~~
13 ~~adopted by a state agency to govern its enforcement or administration of~~
14 ~~legislation shall be adopted by the state agency and filed as a rule and~~
15 ~~regulation as provided in this act. The fact that a statement of policy or an~~
16 ~~interpretation of a statute is made in the decision of a case or in a state agency~~
17 ~~decision upon or disposition of a particular matter as applied to a specific set~~
18 ~~of facts does not render the same a rule and regulation within the meaning of~~
19 ~~the foregoing definition, nor shall it constitute specific adoption thereof by the~~
20 ~~state agency so as to be required to be filed.~~

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

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

25 (B) ~~is an order directed to specifically named persons or to a group which~~
26 ~~does not constitute a general class and the order is served on the person or~~
27 ~~persons to whom it is directed by appropriate means. The fact that the named~~
28 ~~person serves a group of unnamed persons who will be affected does not make~~
29 ~~such an order a rule and regulation;~~

30 (C) ~~relates to the use of highways and is made known to the public by~~
31 ~~means of signs or signals;~~

32 (D) ~~relates to the construction and maintenance of highways or bridges or~~
33 ~~the laying out or relocation of a highway other than bidding procedures or the~~
34 ~~management and regulation of rest areas;~~

35 (E) ~~relates to the curriculum of public educational institutions or to the~~
36 ~~administration, conduct, discipline, or graduation of students from such~~
37 ~~institutions or relates to parking and traffic regulations of state educational~~
38 ~~institutions under the control and supervision of the state board of regents;~~

39 (F) ~~relates to the emergency or security procedures of a correctional~~
40 ~~institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments~~
41 ~~thereto;~~

42 (G) ~~relates to the use of facilities by public libraries;~~

43 (H) ~~relates to military or naval affairs other than the use of armories;~~

1 ~~(I) relates to the form and content of reports, records or accounts of state,~~
2 ~~county or municipal officers, institutions, or agencies;~~

3 ~~(J) relates to expenditures by state agencies for the purchase of materials,~~
4 ~~equipment, or supplies by or for state agencies, or for the printing or~~
5 ~~duplicating of materials for state agencies;~~

6 ~~(K) establishes personnel standards, job classifications, or job ranges for~~
7 ~~state employees who are in the classified civil service;~~

8 ~~(L) fixes or approves rates, prices, or charges, or rates, joint rates, fares,~~
9 ~~tolls, charges, rules, regulations, classifications or schedules of common~~
10 ~~carriers or public utilities subject to the jurisdiction of the state corporation~~
11 ~~commission, except when a statute specifically requires the same to be fixed~~
12 ~~by rule and regulation;~~

13 ~~(M) determines the valuation of securities held by insurance companies;~~

14 ~~(N) is a statistical plan relating to the administration of rate regulation~~
15 ~~laws applicable to casualty insurance or to fire and allied lines insurance;~~

16 ~~(O) is a form, the content or substantive requirements of which are~~
17 ~~prescribed by rule and regulation or statute;~~

18 ~~(P) is a pamphlet or other explanatory material not intended or designed~~
19 ~~as interpretation of legislation enforced or adopted by a state agency but is~~
20 ~~merely informational in nature;~~

21 ~~(Q) establishes seasons and fixes bag, creel, possession, size or length~~
22 ~~limits for the taking or possession of wildlife, if such seasons and limits are~~
23 ~~made known to the public by other means; or~~

24 ~~(R) establishes records retention and disposition schedules for any or all~~
25 ~~state agencies means a standard, requirement or other policy of general~~
26 ~~application that has the force and effect of law, including amendments or~~
27 ~~revocations thereof, issued or adopted by a state agency to implement or~~
28 ~~interpret legislation.~~

29 ~~(e)(5) "Rulemaking" shall have the meaning ascribed to it in K.S.A. 77-~~
30 ~~602, and amendments thereto.~~

31 ~~(f)(6) "Small employer" means any person, firm, corporation, partnership~~
32 ~~or association that employs not more than 50 employees, the majority of~~
33 ~~whom are employed within this state.~~

34 ~~(g)(7) "State agency" means any officer, department, bureau, division,~~
35 ~~board, authority, agency, commission or institution of this state, except the~~
36 ~~judicial and legislative branches, which is authorized by law to promulgate~~
37 ~~rules and regulations concerning the administration, enforcement or~~
38 ~~interpretation of any law of this state.~~

39 Sec. 2. K.S.A. 2010 Supp. 77-421 is hereby amended to read as follows:
40 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or
41 subsection (a)(4), prior to the adoption of any permanent rule and regulation or
42 any temporary rule and regulation which is required to be adopted as a
43 temporary rule and regulation in order to comply with the requirements of the

1 statute authorizing the same and after any such rule and regulation has been
2 approved by the secretary of administration and the attorney general, the
3 adopting state agency shall give at least 60 days' notice of its intended action
4 in the Kansas register and to the secretary of state and to the joint committee
5 on administrative rules and regulations established by K.S.A. 77-436, and
6 amendments thereto. The notice shall be provided to the secretary of state and
7 to the chairperson, vice chairperson, ranking minority member of the joint
8 committee and legislative research department and shall be published in the
9 Kansas register. A complete copy of all proposed rules and regulations and the
10 complete economic impact statement required by K.S.A. 77-416, and
11 amendments thereto, shall accompany the notice sent to the secretary of state.
12 The notice shall contain:

- 13 (A) A summary of the substance of the proposed rules and regulations;
- 14 (B) a summary of the economic impact statement indicating the estimated
15 economic impact on governmental agencies or units, persons subject to the
16 proposed rules and regulations and the general public;
- 17 (C) a summary of the environmental benefit statement, if applicable,
18 indicating the need for the proposed rules and regulations;
- 19 (D) the address where a complete copy of the proposed rules and
20 regulations, the complete economic impact statement, the environmental
21 benefit statement, if applicable, required by K.S.A. 77-416, and amendments
22 thereto, may be obtained;
- 23 (E) the time and place of the public hearing to be held; the manner in
24 which interested parties may present their views; and
- 25 (F) a specific statement that the period of 60 days' notice constitutes a
26 public comment period for the purpose of receiving written public comments
27 on the proposed rules and regulations and the address where such comments
28 may be submitted to the state agency. Publication of such notice in the Kansas
29 register shall constitute notice to all parties affected by the rules and
30 regulations.

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

42 (3) Prior to adopting any rule and regulation which establishes any
43 permanent prior authorization on a prescription-only drug pursuant to K.S.A.

1 39-7,120, and amendments thereto, or which concerns coverage or
2 reimbursement for pharmaceuticals under the pharmacy program of the state
3 medicaid plan, and after such rule and regulation has been approved by the
4 secretary of administration and the attorney general, the Kansas health policy
5 authority shall give at least 30 days' notice of its intended action in the Kansas
6 register and to the secretary of state and to the joint committee on
7 administrative rules and regulations created pursuant to K.S.A. 77-436, and
8 amendments thereto. All other provisions of subsection (a)(1) shall apply to
9 such rules and regulations, except that the statement required by subsection (a)
10 (1)(E) shall state that the period of 30 days' notice constitutes a public
11 comment period on such rules and regulations.

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

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

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

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

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

38 (3) Notwithstanding the other provisions of this section, the Kansas
39 parole board and the secretary of corrections, may give notice or an
40 opportunity to be heard to any inmate in the custody of the secretary of
41 corrections with regard to the adoption of any rule and regulation, but the
42 secretary shall not be required to give such notice or opportunity.

43 (c) (1) The agency shall initiate new rulemaking proceedings under this

1 act, if a state agency proposes to adopt a final rule and regulation that:

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

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

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

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

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

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

31 Sec. 3. K.S.A. 2010 Supp. 77-436 is hereby amended to read as follows:
32 77-436. (a) There is hereby established a joint committee on administrative
33 rules and regulations which shall consist of five senators and seven members
34 of the house of representatives. The five senator members shall be appointed
35 as follows: Three by the committee on organization, calendar and rules and
36 two by the minority leader of the senate. The seven representative members
37 shall be appointed as follows: Four by the speaker of the house of
38 representatives and three by the minority leader of the house of
39 representatives. The committee on organization, calendar and rules shall
40 designate a senator member to be chairperson or vice-chairperson of the joint
41 committee as provided in this section. The speaker of the house of
42 representatives shall designate a representative member to be chairperson or
43 vice-chairperson of the joint committee as provided in this section.

1 (b) A quorum of the joint committee on administrative rules and
2 regulations shall be seven. All actions of the committee may be taken by a
3 majority of those present when there is a quorum. In odd-numbered years the
4 chairperson of the joint committee shall be the designated member of the
5 house of representatives from the convening of the regular session in that year
6 until the convening of the regular session in the next ensuing year. In even-
7 numbered years the chairperson of the joint committee shall be the designated
8 member of the senate from the convening of the regular session of that year
9 until the convening of the regular session of the next ensuing year. The vice-
10 chairperson shall exercise all of the powers of the chairperson in the absence
11 of the chairperson.

12 (c) All proposed rules and regulations shall be reviewed by the joint
13 committee on administrative rules and regulations during the public comment
14 period required by K.S.A. 77-421, and amendments thereto. ~~All proposed rules
15 and regulations specifically excluded from the definition of rule and regulation
16 under subsection (e) of K.S.A. 77-415, and amendments thereto, shall be
17 subject to review by the joint committee.~~ The committee may introduce such
18 legislation as it deems necessary in performing its functions of reviewing
19 administrative rules and regulations ~~and agency forms.~~

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

26 (e) The joint committee shall meet on call of the chairperson as
27 authorized by the legislative coordinating council. All such meetings shall be
28 held in Topeka, unless authorized to be held in a different place by the
29 legislative coordinating council. Members of the joint committee shall receive
30 compensation and travel expenses and subsistence expenses or allowances as
31 provided in K.S.A. 75-3212, and amendments thereto, when attending
32 meetings of such committee authorized by the legislative coordinating council.

33 (f) Amounts paid under authority of this section shall be paid from
34 appropriations for legislative expense and vouchers therefor shall be prepared
35 by the director of legislative administrative services and approved by the
36 chairperson or vice-chairperson of the legislative coordinating council.

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

43 (2) For the purposes of this section, "guidance document" means a

1 *record of general applicability that:*

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

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

4 (C) *states:*

5 (i) *The agency's current approach to, or interpretation of, law; or*

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

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

10 (c) *If a state agency proposes to act in an adjudication at variance with a*
11 *position expressed in a guidance document, the state agency shall provide a*
12 *reasonable explanation for the variance. If an affected person in an*
13 *adjudication claims to have reasonably relied on the agency's position, the*
14 *state agency's explanation for the variance shall include a reasonable*
15 *justification for the agency's conclusion that the need for the variance*
16 *outweighs the affected person's reliance interests.*

17 (d) *Each state agency shall:*

18 (1) *Maintain an index of all of its currently effective guidance documents;*

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

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

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

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

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

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

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