

[As Amended by Senate Committee of the Whole]

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[As Amended by House Committee of the Whole]

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Session of 2011

HOUSE BILL No. 2027

By Committee on Judiciary

1-18

1 AN ACT concerning the rules and regulations filing act; amending K.S.A.
2 77-438 and K.S.A. 2010 Supp. 77-415, 77-421 and 77-436 and
3 repealing the existing sections; also repealing K.S.A. 2010 Supp. 77-
4 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*
14 *regulations filing act. Except as provided in this section, any standard,*
15 *requirement or other policy of general application may be given binding*
16 *legal effect only if it has complied with the requirements of the Kansas*
17 *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 procedures*
21 **provided under the Kansas administrative procedure act or other**
22 **procedures required by law** ~~except that no nonparty to an adjudication~~
23 ~~may be adversely affected by an order unless the order is readily available~~
24 ~~to the public, except that such order shall not be used as precedent in~~
25 ~~any subsequent adjudication against a person who was not a party to~~
26 ~~the original adjudication unless the order is:~~

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

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

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

30 ~~(ii) listed~~ **[(a) Inclusion] in a publicly available index,**

1 maintained by the agency and published on its website, of all orders
2 designated as precedent;

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

5 ~~(iv) [(c) being] made available to the public in such other manner~~
6 ~~as may be prescribed by the secretary of state; and~~

7 ~~(v) not overruled by a court or later adjudication.~~

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

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

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

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

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

19 (D) An agency may provide guidance or information to the public,
20 describing any agency policy or statutory or regulatory requirement
21 except that no such guidance or information may give rise to any legal
22 right or duty or be treated as authority for any standard, requirement or
23 policy reflected therein.

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

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

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

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

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

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

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

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

3 (b)(2) "Environmental rule and regulation" means:

4 (1)(A) A rule and regulation adopted by the secretary of agriculture,
5 the secretary of health and environment or the state corporation
6 commission, which has as a primary purpose the protection of the
7 environment; or

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

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

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

29 (2) A rule and regulation as herein defined shall not include any rule
30 and regulation which:

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

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

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

40 (D) relates to the construction and maintenance of highways or
41 bridges or the laying out or relocation of a highway other than bidding
42 procedures or the management and regulation of rest areas;

43 (E) relates to the curriculum of public educational institutions or to

1 the administration, conduct, discipline, or graduation of students from such
2 institutions or relates to parking and traffic regulations of state educational
3 institutions under the control and supervision of the state board of regents;

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

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

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

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

11 ~~(J) relates to expenditures by state agencies for the purchase of~~
12 ~~materials, equipment, or supplies by or for state agencies, or for the~~
13 ~~printing or duplicating of materials for state agencies;~~

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

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

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

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

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

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

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

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

38 ~~(e)(5) "Rulemaking" shall have the meaning ascribed to it in K.S.A.~~
39 ~~77-602, and amendments thereto.~~

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

43 ~~(g)(7) "State agency" means any officer, department, bureau, division,~~

1 board, authority, agency, commission or institution of this state, except the
2 judicial and legislative branches, which is authorized by law to promulgate
3 rules and regulations concerning the administration, enforcement or
4 interpretation of any law of this state.

5 Sec. 2. K.S.A. 2010 Supp. 77-421 is hereby amended to read as
6 follows: 77-421. (a) (1) Except as provided by subsection (a)(2),
7 subsection (a)(3) or subsection (a)(4), prior to the adoption of any
8 permanent rule and regulation or any temporary rule and regulation which
9 is required to be adopted as a temporary rule and regulation in order to
10 comply with the requirements of the statute authorizing the same and after
11 any such rule and regulation has been approved by the secretary of
12 administration and the attorney general, the adopting state agency shall
13 give at least 60 days' notice of its intended action in the Kansas register
14 and to the secretary of state and to the joint committee on administrative
15 rules and regulations established by K.S.A. 77-436, and amendments
16 thereto. The notice shall be provided to the secretary of state and to the
17 chairperson, vice chairperson, ranking minority member of the joint
18 committee and legislative research department and shall be published in
19 the Kansas register. A complete copy of all proposed rules and regulations
20 and the complete economic impact statement required by K.S.A. 77-416,
21 and amendments thereto, shall accompany the notice sent to the secretary
22 of state. The notice shall contain:

23 (A) A summary of the substance of the proposed rules and
24 regulations;

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

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

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

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

36 (F) a specific statement that the period of 60 days' notice constitutes a
37 public comment period for the purpose of receiving written public
38 comments on the proposed rules and regulations and the address where
39 such comments may be submitted to the state agency. Publication of such
40 notice in the Kansas register shall constitute notice to all parties affected
41 by the rules and regulations.

42 (2) Prior to adopting any rule and regulation which establishes
43 seasons and fixes bag, creel, possession, size or length limits for the taking

1 or possession of wildlife and after such rule and regulation has been
2 approved by the secretary of administration and the attorney general, the
3 secretary of the department of wildlife and parks shall give at least 30
4 days' notice of its intended action in the Kansas register and to the
5 secretary of state and to the joint committee on administrative rules and
6 regulations created pursuant to K.S.A. 77-436, and amendments thereto.
7 All other provisions of subsection (a)(1) shall apply to such rules and
8 regulations, except that the statement required by subsection (a)(1)(E)
9 shall state that the period of 30 days' notice constitutes a public comment
10 period on such rules and regulations.

11 (3) Prior to adopting any rule and regulation which establishes any
12 permanent prior authorization on a prescription-only drug pursuant to
13 K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or
14 reimbursement for pharmaceuticals under the pharmacy program of the
15 state medicaid plan, and after such rule and regulation has been approved
16 by the secretary of administration and the attorney general, the Kansas
17 health policy authority shall give at least 30 days' notice of its intended
18 action in the Kansas register and to the secretary of state and to the joint
19 committee on administrative rules and regulations created pursuant to
20 K.S.A. 77-436, and amendments thereto. All other provisions of
21 subsection (a)(1) shall apply to such rules and regulations, except that the
22 statement required by subsection (a)(1)(E) shall state that the period of 30
23 days' notice constitutes a public comment period on such rules and
24 regulations.

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

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

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

41 (B) the reasons for any substantial change between the text of the
42 proposed adopted or amended rule and regulation contained in the
43 published notice of the proposed adoption or amendment of the rule and

1 regulation and the text of the rule and regulation as finally adopted.

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

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

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

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

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

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

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

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

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

1 Sec. 3. K.S.A. 2010 Supp. 77-436 is hereby amended to read as
 2 follows: 77-436. (a) There is hereby established a joint committee on
 3 administrative rules and regulations which shall consist of five senators
 4 and seven members of the house of representatives. The five senator
 5 members shall be appointed as follows: Three by the committee on
 6 organization, calendar and rules and two by the minority leader of the
 7 senate. The seven representative members shall be appointed as
 8 follows: Four by the speaker of the house of representatives and
 9 three by the minority leader of the house of representatives. The
 10 committee on organization, calendar and rules shall designate a
 11 senator member to be chairperson or vice-chairperson of the joint
 12 committee as provided in this section. The speaker of the house of
 13 representatives shall designate a representative member to be chairperson
 14 or vice-chairperson of the joint committee as provided in this section.

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

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

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

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

1 authorized by the legislative coordinating council. All such meetings shall
2 be held in Topeka, unless authorized to be held in a different place by the
3 legislative coordinating council. Members of the joint committee shall
4 receive compensation and travel expenses and subsistence expenses or
5 allowances as provided in K.S.A. 75-3212, and amendments thereto, when
6 attending meetings of such committee authorized by the legislative
7 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: 77-438.
14 ~~K.S.A. 77-415 to 77-437, inclusive, and acts amendatory thereof or~~
15 ~~supplemental thereto shall be known and may be cited as the rules and~~
16 ~~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"*
20 *means 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, law;*

25 *or*

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

28 (b) *A guidance document may contain binding instructions to state*
29 *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 shall*
33 *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 need*
37 *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*
40 *documents;*

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

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

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

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

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

7 *[(f) Any agency that issues a guidance document shall provide*
8 *a copy of such document to the joint committee on administrative*
9 *rules and regulations. Such document may be submitted*
10 *electronically.]*

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

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