

SENATE BILL No. 252

By Joint Committee on Administrative Rules and Regulations

12-27

1 AN ACT concerning the rules and regulations filing act; pertaining to the
2 notice period for certain rules and regulations; amending K.S.A. 2011
3 Supp. 77-415 and 77-421 and repealing the existing sections.
4

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

6 Sec. 1. K.S.A. 2011 Supp. 77-415 is hereby amended to read as
7 follows: 77-415. (a) K.S.A. 77-415 through 77-438, and amendments
8 thereto, shall be known and may be cited as the Kansas rules and
9 regulations filing act.

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

17 (2) Notwithstanding the provisions of this section:

18 (A) An agency may bind parties, establish policies, and interpret
19 statutes or regulations by order in an adjudication under the Kansas
20 administrative procedure act or other procedures required by law, except
21 that such order shall not be used as precedent in any subsequent
22 adjudication against a person who was not a party to the original
23 adjudication unless the order is:

24 (i) Designated by the agency as precedent;

25 (ii) not overruled by a court or later adjudication; and

26 (iii) disseminated to the public in one of the following ways:

27 (a) Inclusion in a publicly available index, maintained by the agency
28 and published on its website, of all orders designated as precedent;

29 (b) publication by posting in full on an agency website in a format
30 capable of being searched by key terms; or

31 (c) being made available to the public in such other manner as may be
32 prescribed by the secretary of state.

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

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

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

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

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

8 (D) An agency may provide guidance or information to the public,
9 describing any agency policy or statutory or regulatory requirement except
10 that no such guidance or information may give rise to any legal right or
11 duty or be treated as authority for any standard, requirement or policy
12 reflected therein.

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

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

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

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

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

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

29 (c) As used in the Kansas rules and regulations filing act, and
30 amendments thereto, unless the context clearly requires otherwise:

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

33 (2) "Environmental rule and regulation" means:

34 (A) A rule and regulation adopted by the secretary of agriculture, the
35 secretary of health and environment or the state corporation commission,
36 which has as a primary purpose the protection of the environment; or

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

40 (3) "Person" means an individual, firm, association, organization,
41 partnership, business trust, corporation, company or any other legal or
42 commercial entity.

43 (4) "Rule and regulation," "rule," and "regulation" means a standard,

1 requirement or other policy of general application that has the force and
2 effect of law, including amendments or revocations thereof, issued or
3 adopted by a state agency to implement or interpret legislation.

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

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

9 (7) "State agency" means any officer, department, bureau, division,
10 board, authority, agency, commission or institution of this state, except the
11 judicial and legislative branches, which is authorized by law to promulgate
12 rules and regulations concerning the administration, enforcement or
13 interpretation of any law of this state.

14 Sec. 2. K.S.A. 2011 Supp. 77-421 is hereby amended to read as
15 follows: 77-421. (a) (1) Except as provided by subsection (a)(2),
16 subsection (a)(3) or subsection (a)(4), prior to the adoption of any
17 permanent rule and regulation or any temporary rule and regulation which
18 is required to be adopted as a temporary rule and regulation in order to
19 comply with the requirements of the statute authorizing the same and after
20 any such rule and regulation has been approved by the secretary of
21 administration and the attorney general, the adopting state agency shall
22 give at least 60 days' notice of its intended action in the Kansas register
23 and to the secretary of state and to the joint committee on administrative
24 rules and regulations established by K.S.A. 77-436, and amendments
25 thereto. The notice shall be provided to the secretary of state and to the
26 chairperson, vice chairperson, ranking minority member of the joint
27 committee and legislative research department and shall be published in
28 the Kansas register. A complete copy of all proposed rules and regulations
29 and the complete economic impact statement required by K.S.A. 77-416,
30 and amendments thereto, shall accompany the notice sent to the secretary
31 of state. The notice shall contain:

32 (A) A summary of the substance of the proposed rules and
33 regulations;

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

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

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

43 (E) the time and place of the public hearing to be held; the manner in

1 which interested parties may present their views; and

2 (F) a specific statement that the period of 60 days' notice constitutes a
3 public comment period for the purpose of receiving written public
4 comments on the proposed rules and regulations and the address where
5 such comments may be submitted to the state agency. Publication of such
6 notice in the Kansas register shall constitute notice to all parties affected
7 by the rules and regulations.

8 (2) Prior to adopting any rule and regulation which establishes
9 seasons and fixes bag, creel, possession, size or length limits for the taking
10 or possession of wildlife and after such rule and regulation has been
11 approved by the secretary of administration and the attorney general, the
12 secretary of the department of wildlife ~~and parks~~, *parks and tourism* shall
13 give at least 30 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 created pursuant to K.S.A. 77-436, and amendments
16 thereto. All other provisions of subsection (a)(1) shall apply to such rules
17 and regulations, except that the statement required by subsection (a)(1)(E)
18 shall state that the period of 30 days' notice constitutes a public comment
19 period on such rules and regulations.

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

35 (4) Prior to adopting any rule and regulation pursuant to subsection
36 (c), the state agency shall give at least ~~30~~ 60 days' notice of its intended
37 action in the Kansas register and to the secretary of state and to the joint
38 committee on administrative rules and regulations created pursuant to
39 K.S.A. 77-436, and amendments thereto. All other provisions of
40 subsection (a)(1) shall apply to such rules and regulations, except that the
41 statement required by subsection (a)(1)(E) shall state that the period of
42 notice constitutes a public comment period on such rules and regulations.

43 (b) (1) On the date of the hearing, all interested parties shall be given

1 reasonable opportunity to present their views or arguments on adoption of
2 the rule and regulation, either orally or in writing. At the time it adopts or
3 amends a rule and regulation, the state agency shall prepare a concise
4 statement of the principal reasons for adopting the rule and regulation or
5 amendment thereto, including:

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

8 (B) the reasons for any substantial change between the text of the
9 proposed adopted or amended rule and regulation contained in the
10 published notice of the proposed adoption or amendment of the rule and
11 regulation and the text of the rule and regulation as finally adopted.

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

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

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

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

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

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

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

36 (d) When, pursuant to this or any other statute, a state agency holds a
37 hearing on the adoption of a proposed rule and regulation, the agency shall
38 cause written minutes or other records, including a record maintained on
39 sound recording tape or on any electronically accessed media or any
40 combination of written or electronically accessed media records of the
41 hearing to be made. If the proposed rule and regulation is adopted and
42 becomes effective, the state agency shall maintain, for not less than three
43 years after its effective date, such minutes or other records, together with

1 any recording, transcript or other record made of the hearing and a list of
2 all persons who appeared at the hearing and who they represented, any
3 written testimony presented at the hearing and any written comments
4 submitted during the public comment period.

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

11 Sec. 3. K.S.A. 2011 Supp. 77-415 and 77-421 are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.