

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

September 28, 2015
Room 152-S—Statehouse

Members Present

Representative Sharon Schwartz, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Tom Hawk
Senator Garrett Love
Senator Ralph Ostmeyer
Representative Will Carpenter (replacing Representative Huebert)
Representative Jerry Lunn
Representative Janice Pauls
Representative Jim Ward
Representative Valdenia Winn

Members Absent

Representative Steve Huebert
Representative Ed Trimmer

Staff Present

Whitney Howard, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Melissa Calderwood-Renick, Kansas Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Jenna Seematter, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Erik Wisner, Executive Director, Kansas Real Estate Commission
Patricia Scalia, Executive Director, Kansas Board of Indigents' Defense Services
Adrian Serene, Assistant Attorney General, Consumer Protection Division, Attorney General's Office
Cindy Hermes, Director of Public Outreach, Kansas Insurance Department
Jason Lapham, Director of Market Regulation and Producer Licensing Division, Kansas Insurance Department
Jeff Cowger, Deputy General Counsel, Kansas Department of Corrections

Bob Corkins, Director and Public Information Officer, Office of Administrative Hearings
Steve Wassom, Executive Director, Office of the Kansas Securities Commissioner
Ryan Kriegshauser, Director of Policy and Special Counsel, Office of the Kansas
Securities Commissioner

Other Attendees

[See attached list.](#)

Morning Session

The meeting was called to order at 10:05 a.m. by Chairperson Sharon Schwartz. The Chairperson welcomed Representative Will Carpenter, who was appointed as a temporary member for this meeting, replacing Representative Huebert. In the absence of regular staff personnel, Chairperson Schwartz requested Committee staff introduce themselves to the members.

Approval of Minutes

Senator Ostmeyer moved to approve the minutes of May 6, 2015, as written. Motion seconded by Senator Hawk. Motion carried on a voice vote.

[It was noted, after approval of the minutes, a Committee member's name was omitted from the list of Committee members on page 4, last paragraph, who requested to be recorded as opposing the time limit of 90 days in KAR 7-23-15. A technical correction, approved by Chairperson Schwartz, was made to add Senator Hawk's name to those opposing the time limit.]

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Real Estate Commission.

KAR 86-1-5, fees.

Erik Wisner, Executive Director, Kansas Real Estate Commission, appeared before the Committee and explained the purpose of the proposed regulation is to update the fees for broker and salesperson licensure following the enactment of 2015 SB 108, which increased the statutory cap on licensure fees ([Attachment 1](#)). The proposed regulation also lowers fees for background checks due to lower pass-through costs to the Commission and clarifies the calculation method for prorated license application fees. The Commission is proposing a delayed effective date of December 1, 2015.

Responding to questions from the Committee, Mr. Wisner noted the increased fee would result in approximately \$150,000 additional revenue for the agency. Mr. Wisner noted the last time the funds were transferred to the State General Fund (SGF) by the Legislature was 2009, because of the low carryover balance in the fund. The budget of the agency is approximately \$1.0 million with an annual carryover balance of less than \$350,000. Mr. Wisner explained that

the agency is planning to upgrade its online licensing system with the additional revenue. Mr. Wisner also stated the “temporary salesperson’s license” was eliminated in 2007.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Indigents’ Defense Services.

KAR 105-5-2, rates of compensation; KAR 105-5-3, appellate courts, compensation; KAR 105-5-6, reasonable compensation, non-tried cases; KAR 105-5-7, reasonable compensation, tried cases; KAR 105-5-8, compensation, exceptional cases; KAR 105-11-1, defendant reimbursement of attorney fees.

Patricia Scalia, Executive Director, Kansas Board of Indigents’ Defense Services, explained the proposed regulations provide for the adoption by reference of the “attorney cost reimbursement tables: assigned counsel and public defender.” Ms. Scalia noted the table is revised annually and is used by the Court to order defendants to pay some or all of the cost of their defense. She stated the increased funds will allow for the agency to add additional attorney counsel. Ms. Scalia also noted the regulations establish the hourly rate to be paid to assigned counsel and the maximum amount to be paid based on the severity of the charge. The proposed regulations adjust the hourly rate from \$62 per hour to \$65 per hour. In response to a question, Ms. Scalia confirmed the amount specified in regulation is below the allowable compensation amount of \$80 per hour specified in the authorizing statute for this regulation.

Responding to questions from the Committee, Ms. Scalia stated the difficulty in securing attorneys who are qualified to defend the high number of court cases results in defendants spending more time in county jails.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Office of the Attorney General.

KAR 16-14-1, fees; KAR 16-14-2, initial application; KAR 16-14-3, computation of time; KAR 16-14-4, hearings; KAR 16-14-5, notice of hearing; KAR 16-14-6, service of order or notice; KAR 16-14-7, hearing procedure; KAR 16-14-8, evidence; KAR 16-14-9, default.

Adrian Serene, Assistant Attorney General, Consumer Protection Division, Attorney General’s Office, explained the proposed regulations are all new regulations related to the Scrap Metal Theft Reduction Act (Act). The proposed rules and regulations establish the fee for initial and renewal applications for a scrap metal dealer’s registration certificate at \$1,000. The proposed regulations also establish the process and requirements for filing an initial application for a certificate of registration; clarify current policy; establish the procedure for requesting a hearing on an order denying, suspending, or revoking a scrap metal dealer application or registration; establish the notice of hearing requirement for denial, suspension, or revocation hearings; establish the procedure for serving an order or notice, as required for the Act; establish the procedure to be followed at a hearing regarding the denial, suspension, or revocation of a scrap metal dealer’s application or registration; establish the requirements relating to evidence considered at a hearing for the denial, suspension, or revocation of a scrap metal dealer’s application or registration; and establish the default procedure to be followed

during the hearing process for the denial, suspension, or revocation of a scrap metal dealer's application or registration.

Responding to questions from the Committee, Mr. Serene stated he was not aware of a reduction in scrap metal theft at this time. Mr. Serene indicated the determination and collection of a fee for scrap metal dealers previously was handled by individual counties. Some members of the Committee voiced concern that imposing a license fee of \$1,000 on small scrap metal dealers would cause a burden to those dealers, especially in rural Kansas. Mr. Serene indicated the fee is non-refundable and there are no provisions for the fee to be prorated for the size of the business. Mr. Serene stated the fees will be used to hire a law enforcement officer to address the issue of stolen scrap metal. Additionally, the funds will be used to create and maintain a registry database pursuant to the Act. Mr. Serene noted the cost of this database would be \$150,000 annually.

Mr. Serene stated there is a \$5,000 penalty for failure to register a business. Responding to a question concerning how the agency will track scrap metal dealers who are not in compliance with the Act, Mr. Serene indicated the Attorney General's Office would maintain a list of dealers, check advertisements, and contact local sheriff offices to supply a list of those dealers within a county, then match the list with the list of licensed dealers. Mr. Serene stated the definition of "scrap metal dealer" is already in statute.

The Committee noted the public opposition to the procedure and the fees, when the issue was debated by the Legislature's Judiciary Committees, mainly because of the effect on small businesses.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Insurance Department.

KAR 40-2-18, annuities, mortality tables, permits, effective date; KAR 40-2-20, life insurance, accelerated benefits, contract requirements and restrictions.

Cindy Hermes, Director of Public Outreach, Kansas Insurance Department, appeared before the Committee to address the proposed regulations. Accompanying Ms. Hermes was Jason Lapham, Director of Market Regulation and Producer Licensing Division. Ms. Hermes noted the policy and regulation recognizes a new annuity mortality table for use in determining reserve liabilities for annuities dated September 1, 2015. She stated there is no economic impact to life insurers, consumers, small businesses, or other governmental agencies ([Attachment 2](#)).

Ms. Hermes explained the proposed regulation amends the existing regulation by defining and establishing chronic illness as a possible qualifying condition for accelerated benefits, and specifies there can be no time frame for a claim to be submitted following the occurrence of a qualifying condition ([Attachment 3](#)).

Responding to a question from the Committee as to how chronic illness has been handled in the past, Mr. Lapham stated chronic illness was not reflected in the marketplace when the original regulations were written; however, is now recognized and, therefore, the regulations are being amended to include chronic illness.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Corrections.

KAR 123-15-107, special procedures for sexual abuse grievances, sexual harassment grievances and grievances alleging retaliation for filing same, reports of sexual abuse or sexual harassment submitted by third parties.

Jeff Cowger, Deputy General Counsel, Kansas Department of Corrections (KDOC), explained this regulation adopts definitions of certain terms dealing with sexual abuse and sexual harassment, including a definition of voyeurism, which, when engaged in by staff, contractors, or volunteers, is recognized as a form of sexual abuse. The regulation also provides for procedural steps to handle and dispose of such grievances, consisting of a facility-level disposition by the superintendent of the offender's assigned facility, and an optional appeal to the Secretary of Corrections. The new regulation is designed to aid KDOC in its efforts to comply with the national standards promulgated by the U.S. Attorney General pursuant to the Prison Rape Elimination Act of 2003.

Responding to comments from the Committee, Mr. Cowger stated the evaluations are required by the federal government and mirror federal regulations.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Office of Administrative Hearings.

KAR 1-39-1, 1-39-2, 1-39-3, 1-39-4, revocations; KAR 133-1-1, definitions; KAR 133-1-2, assignment of administrative law judges; KAR 133-1-3, conduct of proceedings; KAR 133-1-4, electronic filing.

Bob Corkins, Director and Public Information Officer, Office of Administrative Hearings (OAH), explained the OAH became a stand-alone state agency in 2004. The regulations that are now either unnecessary or contain outdated references will be corrected by these regulatory proposals. The new regulations allow for electronic filing at judges' discretion. Mr. Corkins stated these regulations will have no economic impact on the OAH.

Responding to comments and questions from the Committee, Mr. Corkins stated the agency is 100 percent fee funded; however, the agency presents its budget to a budget committee during the legislative session, and it is approved as part of the state budget. He indicated legislation was introduced during the 2015 Session to incorporate these regulations into statute. This legislation passed the House but was never acted upon by the Senate. Responding to questions from the Committee as to why the legislation did not pass the Senate, Mr. Corkins stated the legislation may have reached the Senate late in the Session when the budget and other issues became higher priorities. Because the bill, as introduced before the Legislature, went beyond these rules and regulations, the Committee noted there may be good reason to go forward with legislation.

The meeting was recessed at 11:50 a.m.

Afternoon Session

The meeting reconvened at 1:20 p.m.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Office of the Securities Commissioner.

KAR 81-1-1, definition of terms; KAR 81-2-1, forms and adoptions by reference; KAR 81-3-1, registration procedures for broker-dealers and agents; KAR 81-3-5, sales of securities at financial institutions; KAR 81-3-6, dishonest or unethical practices of broker-dealers and agents; KAR 81-3-7, supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers; KAR 81-4-1, registration of securities; KAR 81-4-4, registration requirements for not-for-profit issuers; KAR 81-5-7, exchange exemption; KAR 81-5-15, notice filings and fees for rule 506 offerings; KAR 81-5-17, standard manuals exemption; KAR 81-5-21, invest Kansas exemption; KAR 81-6-1, prospectus; KAR 81-7-1, general statements of policy for registration of securities; KAR 81-7-2, statements of policy for specific types of securities offerings; KAR 81-14-1, registration procedures for investment advisers and investment adviser representatives; KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers; KAR 81-14-11, Kansas private adviser exemption.

Steve Wassom, Executive Director, Office of the Securities Commissioner, appeared before the Committee to address the proposed rules and regulations. Accompanying Mr. Wassom was Ryan Kriegshauser, Director of Policy and Special Counsel. Mr. Wassom stated most of the proposed amendments to these regulations are technical in nature to update and clarify the applicable contexts of definitions, update adoptions of U.S. Securities and Exchange Commission (SEC) statutes and rules and the Financial Industry Regulatory Authority (FINRA) rules by reference, update references to authorizing and implementing statutes under the Kansas Uniform Securities Act (KUSA), and make improvements in wording and sentence structure to enhance readability and understandability of the regulations. Mr. Wassom noted several of the regulations apply to electronic filing.

Responding to concerns or questions from the Committee, Mr. Wassom indicated that if the state's rules and regulations conflict with SEC rules and regulations, the agency would need to appear before the Committee again to amend the state's rules and regulations to conform to SEC rules and regulations.

COMMITTEE DISCUSSION AND COMMENTS

Kansas Real Estate Commission

After discussion, the Committee had no comments.

Kansas Board of Indigents' Defense Services.

After discussion, the Committee had the following comment.

The Committee commends the agency's efforts to identify cost savings while operating under budget constraints.

Kansas Office of the Attorney General

After discussion, the Committee had the following comments.

KAR 16-14-1. The Committee expresses a concern that the cost of initial registration and annual renewal of a scrap metal dealer's registration certificate is excessive and will discourage compliance with registration. The Committee also expresses a concern that the fee is the same for all dealers, without differentiating dealer size, or between urban and rural dealers.

Kansas Insurance Department

After discussion, the Committee had no comments.

Kansas Department of Corrections

After discussion, the Committee had no comments.

Kansas Office of Administrative Hearings

After discussion, the Committee had the following comments and requests.

KAR 133-1-4. The Committee suggests the agency include "for good cause" or similar language in determining an extension of time in which to file any matter.

KAR 133-1-2. The Committee requests concrete examples of application of non-KAPA hearings or those not listed in KSA 77-551 that the OAH Director would assign a presiding officer.

Kansas Office of the Securities Commissioner

After discussion, the Committee had the following comments and requests.

KAR 81-2-1. The Committee expresses a concern that the language of paragraphs (e) and (f) of the regulation are unclear and could be viewed

as an unlawful delegation of authority if those clauses were intended for non-adopted regulations to trump adopted regulations. The Committee requests the Office of the Securities Commissioner review these paragraphs to ensure the language conforms with the agency's intent, as stated by the agency's representative at the Joint Committee meeting.

KAR 81-3-1, KAR 81-5-15. The Committee notes the Attorney General's Office has stricken "for good cause shown" and has replaced the language with statutory language. The Committee requests an explanation for these changes.

Request. The Committee requests the Chairperson transmit a letter to the Attorney General's Office regarding the removal of "for good cause shown" in various regulations, as well as the insertion of "adoption by reference" language.

Adjournment

The meeting was adjourned at 3:15 p.m. The next meeting of the Committee is scheduled for November 16, 2015.

Prepared by Shirley Jepson
Edited by Whitney Howard, Sharon Wenger,
and Melissa Calderwood-Renick

Approved by the Committee on:

November 16, 2015
(Date)