

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 14, 2007  
Room 519-S—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative John Faber  
Representative Joe Patton  
Representative Jan Pauls  
Representative Arlen Siegfried  
Representative Mark Treaster  
Representative Ed Trimmer

#### Member Absent

Senator Donald Betts

#### Staff Present

Melissa Calderwood, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Kenneth Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Others Present

Sherry Diel, Kansas Real Estate Commission  
Kelly White, Kansas Real Estate Commission  
Derek Hein, Hein Law Firm  
Leslie Allen, Behavioral Sciences Regulatory Board  
Phyllis Gilmore, Behavioral Sciences Regulatory Board  
Derek Holland, Bottenberg & Associates  
Mack Smith, Board of Mortuary Arts  
John P. Smith, Kansas Department of Credit Unions  
Lane Hemsley, Kansas Board of Pharmacy  
Pat Scalia, State Board of Indigents' Defense Services

Darren Root, Kansas Department of Labor  
Jim Garner, Kansas Department of Labor  
A. J. Kotich, Kansas Department of Labor  
Kurt Carlson, Kansas Department of Labor  
Terry Tracy, Kansas Department of Labor  
Paula Greathouse, Kansas Department of Labor  
Ron Seeber, Hein Law Firm  
Lane Watson, Juvenile Justice Authority  
Sara Stonecipher, Department of Commerce  
Ed Van Petten, Lottery Commission  
Bob Krehbiel, Chief Gaming Officer, Kansas Racing and Gaming Commission

### **Morning Session**

Chairperson Holmes called the meeting to order at 9:10 a.m. on August 14, 2007. The Chairperson welcomed two new members to the Committee, Representative Joe Patton and Representative Ed Trimmer.

The Chairperson recognized Sherry Diel, Executive Director, Kansas Real Estate Commission, to speak to the proposed rules and regulations noticed for hearing by the Kansas Real Estate Commission. KAR 86-1-2, examinations; KAR 86-1-5, fees; KAR 86-1-10, approval of courses of instruction; procedure; KAR 86-1-11, minimum curricula and standards for course; KAR 86-1-13, submission of evidence of course attendance; KAR 86-1-15, change of last name; KAR 86-1-17, responsibilities of schools; KAR 86-1-18; alternative licensing criteria for broker applicants; KAR 86-1-19; submission of supporting documentation with application; KAR 86-1-20, age of documentation submitted to the commission; KAR 86-3-8, brokerage agreements; KAR 86-3-9, legal counsel; KAR 86-3-10, retention of records; KAR 86-3-15, reporting of information; KAR 86-3-19; disclosure of interest in property purchased, sold, leased, or exchanged; KAR 86-3-21, trust account documentation; KAR 86-3-22, transaction identification; KAR 86-3-26a, designated agents; KAR 86-2-3, revoked; KAR 86-2-5, revoked; KAR 86-2-7, revoked; and KAR 86-3-3, revoked.

Sherry Diel stated that several of these regulations were the result of legislation passed during the 2007 Session and some regulations clarify existing language. In response to a question from a Committee member, Ms. Diel stated that in KAR 86-1-5 the fee for obtaining a criminal history check conducted by the Kansas Bureau of Investigation was \$54.00 to the KBI, and \$10.00 goes to the agency for administration costs.

Committee members had questions concerning KAR 86-3-10 (e), "all documents" being too broad and suggested that the word "all" be removed. Committee members expressed concern that there was no comprehensive list of the types of documents and records to use as a guideline for inclusion in the broker's file. Staff suggested that a policy needs to be established concerning at what point a document relates to a real estate transaction and set some guidelines for use in the industry. It also was suggested that a policy be established directing e-mail correspondence be kept professional since these messages may be kept in the file. The same guidelines would cover phone and voice mail messages. Ms. Diel responded to questions of a general nature from Committee members. The Chairperson thanked Ms. Diel for her appearance before the Committee.

Chairperson Holmes asked for action on the minutes for July 9, 2007. *Vice-Chairperson Schmidt moved that the minutes be approved as presented. Senator Ostmeyer seconded the motion. The motion passed.*

Leslie Allen was introduced by the Chairperson to address the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-13, fees; KAR 102-2-3, fees; KAR 102-3-2, fees; KAR 102-4-2, fees; and KAR 102-5-2, fees.

Ms. Allen stated that these rules and regulations are being proposed to enable the implementation of HB 2182, which was passed by the 2007 Legislature. HB 2182 created a temporary permit to allow a professional from another state to temporarily practice in Kansas; thus placing that individual under the jurisdiction of the Board while working in Kansas. After responding to all questions from the Committee, Ms. Allen was thanked by the Chairperson for her presentation before the Committee.

Chairperson Holmes welcomed Sara Stonecipher, Community Development Division, to speak to the proposed rule and regulation noticed for hearing by the Department of Commerce. KAR 110-13-10, administration of contributions and regional business development fund.

Ms. Stonecipher stated this rule and regulation is the result of several requests from regional foundations to allow the foundations to open accounts at credit unions. Regional foundations requested the ability to maximize their rate of interest on development funds accounts.

The Committee questioned the statutory authority for designation of a specific financial institution and upon checking found no conflict in this revision. A Committee member noted that the web site address should be included in the notice for the public to view or obtain copies of the rules and regulations. It also was suggested that the appropriate representatives' e-mail address should be included along with a statement that the agency would accept comments by e-mail. Ms. Stonecipher was thanked for her appearance before the Committee.

Chairperson Holmes recognized Mack Smith, Executive Secretary, to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Mortuary Arts. KAR 63-2-26, assistant funeral director's license examination; and KAR 63-4-1, payment of fees.

Mr. Smith stated that these proposed rules and regulations are the result of SB 179 passed by the 2007 Legislature. There were no questions or concerns from the Committee about these rules and regulations. The Committee did appreciate the fact that the Board prepared these regulations in a timely manner. The Chairperson thanked Mr. Smith for his appearance before the Committee.

Lane Hemsley was welcomed by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-7-21, institutional drug rooms.

Mr. Hemsley informed the Committee that this regulation identified the policies and procedures governing the storage, control, and dispensation of drugs within an institutional drug room and the Board has been operating under these statutory guidelines for 20 years.

Staff noted that on page 1 (a), the phrase "in institutional drug rooms" be added after "all drugs dispensed." On page 3 (e), after "any prepackaged drug" the phrase "dispensed in institutional drug rooms" should be added. The Committee felt that the economic impact statement might not reflect accurately the costs to less populated areas of the state. The Committee as a whole had a concern about the impact this would have on small county and city jails, and if the economic impact to these entities had been considered. Committee members' concern was that county budgets had already been set for 2008 and this would present financial hardship in counties that were not aware of this provision (if the implementation date was prior to January 2009). The Committee requested that the Board provide the Committee with a list of all registered drug rooms, broken down by types.

Mr. Hemsley stated that he could do this. It was the recommendation of the Committee that the Kansas Pharmacy Board should notify the League of Municipalities, the Association of Counties, sheriff offices, and police and law enforcement agencies immediately about the public hearing concerning this proposed rule and regulation. After answering all the questions from the Committee, Mr. Hemsley was thanked by the Chairperson for his presentation before the Committee.

Pat Scalia was introduced by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by the State Board of Indigents' Defense Services. KAR 105-11-1, defendant reimbursement of attorney fees.

Ms. Scalia stated that this rule and regulation provides for the adoption by reference of the "Attorney cost reimbursement tables: assigned counsel and public defender." The scale is revised annually and is used by the Court to order defendants to pay some or all of the cost of their defenses.

The Committee had no questions for Ms. Scalia and the Chairperson thanked her for appearing before the Committee.

Chairperson Holmes recessed the meeting until 1:30 p.m.

### **Afternoon Session**

The Chairperson reconvened the meeting at 1:30 p.m. Chairperson Holmes welcomed Jim Garner, Secretary, Department of Labor, to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 50-3-2, initial claims for benefits; intrastate workers.

Secretary Garner stated that this rule and regulation was the result of SB 83, which passed during the 2007 Session. Mr. Garner responded to questions from the Committee concerning the definition of "terminating business operations" and what was meant by "partially unemployed workers." After answering all questions from the Committee, the Chairperson thanked Secretary Garner for his appearance before the Committee.

Darren Root, Staff Attorney, was recognized by the Chairperson to speak to additional proposed rules and regulations noticed for hearing by the Kansas Department of Labor. KAR 49-45-36, uniform plumbing code; KAR 49-50-6, hydrostatic pressure tests and inspection; KAR 49-50-20, new boilers, new pressure vessels, new boiler rooms and boiler clearances; and KAR 51-9-7, fees for medical and hospital services.

Mr. Root stated that KAR 49-45-36 will update the boiler specification and inspection regulations to conform to the national standards currently used by the industry. This will assure uniformity in applicable standards for the safe operation of covered boilers.

Staff inquired whether the Department had considered including the date the regulation will become law within the regulation, so regulated companies would be aware when changes took effect. Mr. Root explained that whenever the safety department does an inspection after a regulation has been passed, it has always been the procedure to give the business a warning to allow them time to meet the standards, unless it is a circumstance that requires immediate action to be taken. Staff noted in KAR 49-50-20, there needs to be a definition of the term "new" to clarify what "new installation" refers to in the regulation.

Mr. Root stated that KAR 51-9-7 was being proposed to update the schedule of maximum fees for medical, surgical, hospital, dental, nursing, vocational rehabilitation, or any other treatment or services provided or ordered by health care providers and rendered to employees under the Workers Compensation Act at least every two years. A Committee member asked for information from the Department on what percentage the medical fees were going up in the State of Kansas and also nationally, and if the fees would be so low that medical personnel would refuse to take workers compensation claims. It was stated that Kansas was in the middle of the field and a raise of 1.8 percent would retain that average. A question was raised by a Committee member concerning the economic impact statement and a request that the increase be reflected in a dollar amount. Mr. Root stated that this would be provided to the Committee. (This estimate was provided later at the meeting. It was noted the National Council on Compensation Insurance, Inc., estimated the figure at \$10.7 million.)

After responding to all the Committee questions, the Chairperson thanked Mr. Root for his presentation before the Committee.

Deletria Nash, Assistant General Counsel, was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-2-30, military sales practices.

Ms. Nash stated that this is a new regulation that is the result of Substitute for HB 2108 passed during the 2007 Session that seeks to protect members of the armed forces by regulating the sales of insurance products sold to these individuals. The proposed regulation makes certain acts and practices to be false, misleading, deceptive or unfair under state trade practices statutes.

Staff noted that the history section needs to be updated to reflect the correct version of the bill passed. After responding to several general questions from Committee members, Ms. Nash was thanked for her presentation before the Committee.

Legislative Research staff distributed the letter requesting an Attorney General's opinion regarding the questions that the Committee had discussed at its July meeting concerning the temporary rules and regulations promulgated by the Kansas Lottery Commission (Attachment 2). A copy of the proposed rules and regulations on the electronic gaming machines at racetrack gaming facilities from the Lottery Commission (Attachment 3), and a memorandum from Ken Wilke, Office of Revisor of Statutes, on administrative regulations of the Nevada Gaming Commission as discussed at the July 9, 2007 meeting (Attachment 4) also were distributed.

Chairperson Holmes welcomed Ed Van Petten, Executive Director, Kansas Lottery, to review the Kansas expanded lottery rules and regulations for the Committee (exempt regulations). Mr. Van Petten stated that the 18 rules and regulations before the Committee dealing with expanded gaming will be presented at a meeting held August 15. He stated that KAR 111-101-2 will have to be amended since this regulation was prepared and allocated machines to the Wichita greyhound track prior to the Sedgwick County vote. Committee discussion of the individual regulations followed. Chief Gaming Officer Bob Krehbiel was recognized and provided comment on his assigned role. A request was made to invite the Racing and Gaming Commission Executive Director to the Committee's October 8 meeting to discuss issues relating to the chain of command and update the Committee on the status of regulations relating to 2007 SB 66.

The Chairperson thanked Mr. Van Petten and Mr. Krehbiel for appearing before the Committee.

The Chairperson announced that the next meeting will be October 8, 2007. The meeting was adjourned at 3:55 p.m.

## Committee Comments on Proposed Rules and Regulations

**Kansas Real Estate Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examinations; fees; approval of courses of instruction, procedure; minimum curricula and standards for course; submission of evidence of course attendance; change of last name; responsibilities of schools; alternative licensing criteria for broker applicants; submission of supporting documentation with application; age of documentation submitted to the commission; brokerage agreements; legal counsel; retention of records; reporting of information; disclosure of interest in property purchased, sold, leased, or exchanged; trust account documentation; transaction identification; designated agents; and revocations, and had the following comments.

KAR 86-3-10. The Committee requests the agency review subsection (e) and consider clarifying language as to the documents that would need to be retained by the broker. The Committee suggests consideration be given to removing "all" or specifying "pertinent" documents in subsection (e). Also, please clarify what is meant by "relate to any real estate transaction." The Committee also inquires as to when a transaction is originated (*i.e.* delivery of an agency brochure).

Additionally, the Committee inquires about the need for a policy for a broker's e-mail correspondence. Please advise the Committee if either the Commission or appropriate trade association have a written policy in place. The Committee notes that such policy could address professionalism in correspondence and keep professional and social communications separate (more easy to identify for file retention purposes).

**Behavioral Sciences Regulatory Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees (psychologists); fees (social workers); fees (counselors); fees (master's level psychologists and clinical psychotherapists); and fees (marriage and family therapists), and had no comment.

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning administration of contributions and regional business development fund, and had the following comment.

Comment. Please include in your notice of hearing information which instructs the public how to access the regulations through the Internet and also to allow comments on the regulations through e-mail.

**Kansas State Board of Mortuary Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning assistant funeral director's license examination; and payment of fees, and had the following comment.

Comment. The Committee commends the Board on its prompt promulgation of these regulations, noting that the authorizing statute will not be effective until January 1, 2008.

**Kansas State Board of Pharmacy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning institutional drug rooms,

and had the following comments.

KAR 68-7-21. The Committee suggests making reference to an "institutional drug room" in both subsections (a) and (e) to limit the scope of these provisions.

Comment. The Committee expresses concern regarding the potential economic impact on county jails and other similar facilities that may be subject to this regulation. The Committee is interested in:

- Any available information regarding how many Kansas Department of Corrections/ county jail facilities currently utilize prepackaging and any associated costs known with using prepackaging (for those facilities who currently use other methods of packaging); and
- If the prepackaging and delivery system required by the regulation will have any impact on the availability of prescription drugs to inmates and third party payor compensation.

Please revise the economic impact statement to account for any such impact and provide information regarding the number of institutional drug rooms currently registered by the Board.

Request. The Committee requests the Board provide the Kansas Association of Counties, the Kansas Association of Police Chiefs, the Kansas Sheriff's Association, and the League of Municipalities copies of the notice of hearing and regulation to allow each entity the opportunity to review the regulation and any potential impact. The Committee requests that this request be carried out upon receipt of this letter.

Request. The Committee suggests the Board give consideration to delay of the effective date of this regulation if the public hearing and input from the organizations listed above warrant.

**State Board of Indigents' Defense Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning defendant reimbursement of attorney fees, and had no comment.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning uniform plumbing code; initial claims for benefits, intrastate workers; hydrostatic pressure tests; inspection and new boilers, new pressure vessels, new boiler rooms, and boiler clearances; and fees for medical and hospital services, and had the following comments.

KAR 49-50-20. The Committee requests the agency clarify what is meant by the term "new" as it applies to boilers. The Committee notes the information provided at the time of the hearing seemed to indicate that a "new" installation of a boiler could be an installer of an older boiler. Consider specifying a date certain (for manufacturer of) in the regulation for a "new" boiler. Also, please advise the Committee if this regulation or another boiler specification or inspection regulation could be amended to include a formal application for a variance from a specification or other such requirement.

General Comment. The Committee questions the authority for the agency to regulate a boiler manufactured prior to 1998. Please advise the Committee as to the statutory authority for the regulation of these boilers.

**Kansas Insurance Department.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning military sales practices, and had no comment.

Prepared by Judy Glasgow  
Edited by Melissa Calderwood and  
Raney Gilliland

Approved by Committee on:

October 8, 2007

(Date)