

## **MINUTES**

### **JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

December 10, 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 Siegfroid  
Representative Ed Trimmer

#### **Members Absent**

Senator Donald Betts  
Representative Mark Treaster

#### **Staff Present**

Raney Gilliland, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Kenneth Wilke, Office of the Revisor of Statutes  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### **Others Present**

Leslie Allen, Behavioral Sciences Regulatory Board  
Ron Seeber, Hein Law Firm  
Julie Ehler, Kansas Department of Agriculture  
Steve Moris, Kansas Department of Agriculture  
Randy Stookey, Kansas Department of Agriculture  
Gary Meyer, Kansas Department of Agriculture  
Dan Tuggle, Kansas Department of Agriculture

Mary Glassburner, Kansas Department of Health and Environment  
Merrill Befort, Department of Commerce  
Aaron Davis, Boxing Commissioner, Kansas State Athletic Commission, Department  
of Commerce

## Morning Session

Chairperson Carl Holmes called the meeting to order at 10:00 a.m. December 10, 2007.

Staff distributed a copy of the response that had been received from the Kansas Real Estate Appraisal Board ([Attachment 1](#)) providing the Committee with a detailed economic impact statement and a copy of the current and proposed 2009 budget and a summary of the number of complaints received and the renewal fees charged for the past several years. Staff also distributed a copy of the letter from the Kansas State Board of Healing Arts ([Attachment 2](#)) in response to questions that were raised by this Committee at the November 19, 2007, meeting. Staff called the Committee's attention to the last sentence on the first page of the letter from Mark Stafford of the Kansas State Board of Healing Arts. The Committee asked what the National Commission on Uniform State Laws recommended. Mr. Wilke stated that it did not offer that much in the way of guidance. Mr. Gilliland stated that the Temporary Rules Committee met today prior to this meeting and approved a temporary rule and regulation addressing the issue of the drug phosphatidylcholine and sodium deoxycholate ("PCDC"), commonly known as Lipodissolve.

Chairperson Holmes welcomed Leslie Allen to speak to the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-12, educational requirements.

Ms. Allen stated that this rule and regulation contains the educational requirements for psychology licensure. The amended rule and regulation reflects a statutory change to the requirement for hours taken in residence from an APA-accredited psychology program. This amended rule and regulation would allow anyone who began prior to March 10, 2006, to complete the program without meeting the new requirements. Staff noted that on page 2, third line, the language needs to be clarified by inserting a period after "American psychological association" and beginning the next sentence with "If the applicant began the program after March 10, 2006, the accredited program shall have at least..." Ms. Allen stated that this would be done. There were no other questions from the Committee. Chairperson Holmes thanked Ms. Allen for appearing before the Committee.

Randy Stookey, Staff Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture regarding pesticides. KAR 4-13-1, definitions; KAR 4-13-3, categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; KAR 4-13-9, report of address, name, or personnel change by business; KAR 4-13-11, revoked; KAR 4-13-13, commercial applicator examinations; KAR 4-13-20, pesticide business license, renewal, and uncertified employee fees; KAR 4-13-21, government agency registration and renewal fees; KAR 4-13-22, application fee for commercial applicator's certificate; KAR 4-13-23, examination fees; KAR 4-13-24, certified private applicator's certificate fee; and KAR 4-13-33, pest control technician registration and renewal fees.

Mr. Stookey stated that these proposed changes are to clarify language and to add stump treatment and sewer root control in KAR 4-13-3. Staff questioned the use of the term "certification" in KAR 4-13-3, page 6, (B) last line, because the listed statute refers to licensing rather than

certifying. Mr. Stookey stated that the agency would take a look at this again. Upon responding to numerous questions from the Committee of a general nature, the Chairperson thanked Mr. Stookey for his presentation before the Committee.

Julie Ehler, Staff Attorney, was recognized by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Department of Agriculture regarding food safety. KAR 28-23-16, revoked; KAR 4-28-8, definitions; KAR 4-28-9, management and personnel; KAR 4-28-10, food; KAR 4-28-11, equipment, utensils, and linens; KAR 4-28-12, water, plumbing, and waste; KAR 4-28-13, physical facilities; KAR 4-28-14, poisonous or toxic materials; KAR 4-28-15, compliance and enforcement; and KAR 4-28-16, mobile food establishments, pushcarts, and temporary food establishments.

Ms. Ehler stated that the purpose of these proposed rules and regulations is to adopt by reference, with some modifications, the 2005 Model Food Code and a 2007 chapter pertaining to mobile and temporary food establishments and pushcarts. Staff noted that KAR 28-23-16 was not transferred to the Department of Agriculture by the Kansas Department of Health and Environment, therefore the Department of Agriculture may not have the authority to revoke it. As of this date, the Kansas Department of Health and Environment has not revoked this either. Ms. Ehler stated that she would check with the Department of Health and Environment and see what that agency's intention is regarding this rule and regulation. Both agencies need to be notified so they can work on this together. Committee members questioned the reference to "17 consecutive days" in KAR 4-28-8, page 3, first paragraph, noting that the statute states "7 days" as the limit. Ms. Ehler stated that she would recheck this reference. Staff noted that, in the history section of these rules and regulations, a reference should be made to the Executive Reorganization Order. After answering all questions from the Committee, Ms. Ehler was thanked for her appearance before the Committee.

Chairperson Holmes welcomed Mary Glassburner, Kansas Department of Health and Environment, to speak to the Committee ([Attachment 3](#)) regarding proposed rules and regulations for lodging accommodations. Ms. Glassburner provided copies for the Committee's review of the proposed rules and regulations as amended after the November 19, 2007, Committee meeting. ([Attachment 4](#)). Ms. Glassburner addressed issues that the Committee and the Kansas Restaurant and Hospitality Association had brought forward at the last meeting, including the definition of a lodging establishment, hand washing, stains and holes in linens, mattresses ([Attachment 5](#)), and the storage location of dishware and utensils ([Attachment 6](#)). A revised economic impact statement was furnished to the Committee reflecting the costs to the industry of the various regulations to be implemented ([Attachment 7](#)). A memorandum was distributed to Committee members concerning whether the Kansas Department of Health and Environment has authority to regulate state-owned lodging facilities located at state parks and recreational facilities ([Attachment 8](#)). She stated that this memorandum states that KDHE does not have such authority and that the Secretary of the Department of Wildlife and Parks has exclusive administrative control over these facilities. A Committee member noted KAR 28-36-83(a)(2), should be changed to read "Each walking, driving, and parking surface shall be graded or maintained to prevent the pooling of water." A suggestion was made by a Committee member that ice bucket liners be available at all establishments upon request. Ms. Glassburner said that this would be considered. After answering all the questions from Committee members, Ms. Glassburner was thanked by Chairperson Holmes for her appearance before the Committee.

The Chairperson recessed the Committee until 1:30 p.m.

### **Afternoon Session**

The meeting was reconvened at 1:30 p.m. by the Chairperson, who then recognized Merrill Befort, Attorney at the Department of Commerce for the Kansas Athletic Commission, and Aaron Davis, Boxing Commissioner, to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce. KAR 128-1-1, definitions; KAR 128-2-1, general licensure requirements; KAR 128-2-3, contestant; KAR 128-2-4, judge; KAR 128-2-5, manager; KAR 128-2-6, matchmaker; KAR 128-2-7, physician; KAR 128-2-8, promoter; KAR 128-2-9, referee; KAR 128-2-10, second; KAR 128-2-11, timekeeper; KAR 128-2-12, fees for licenses and identification cards; KAR 128-2-13, permits; KAR 128-3-1, tickets and taxes; KAR 128-4-1, announcer; KAR 128-4-2, contestant; KAR 128-4-3, judge; KAR 128-4-4, matchmaker; KAR 128-4-5, physician; KAR 128-4-6, promoter; KAR 128-4-7, referee; KAR 128-4-8, second; KAR 128-4-9, timekeeper; KAR 128-4a-1, inspector; KAR 128-5-1, professional boxing, professional kickboxing, and professional full-contact karate contests; KAR 128-5-2, professional mixed martial arts contests; KAR 128-6-1, professional boxing; KAR 128-6-2, professional kickboxing; and KAR 128-6-4, professional mixed martial arts contests.

Ms. Befort explained that in 1996 the Federal government enacted a law, which is now called the Muhammad Ali Boxing Reform Act, to protect boxers and to require that each state have a boxing commission. If a state does not have a boxing commission, the American Boxing Commission may appoint someone from another jurisdiction (state) to regulate the sport in the state without such a commission. Before the Kansas Professional Regulated Sports Act was enacted in 2004, regulation was left up to each city or municipality. Kansas did have a boxing commission for 60 years, until 1979 when it was disbanded by the state. Ms. Befort stated that these regulations were to be enacted by July 1, 2005, but this did not happen. Mr. Davis stated that there are occasions when there are both amateur and professional matches occurring at the same event, but Kansas rules and regulations cover only the professional bouts. Ms. Befort stated that in these cases the Commission would like to see legislation passed that would allow the officials to regulate those amateur matches occurring alongside the professional matches.

Committee members and staff had concerns about a number of the proposed rules and regulations:

- Staff pointed out that the definition of “contestant” in KAR 128-1-1 is different than the definition in the statute. Ms. Befort stated that they would check into this and correct it.
- A question was raised about KAR 128-2-1(c) as to whether the 10 days referred to are business days since it is less than 11 days. Ms. Befort stated they would clarify this. Staff questioned whether, in that regulation, the name change was referring to the licensee’s legal name or to the “ring name.” Ms. Befort stated that this would be both, but mainly for the professional name.
- In KAR 128-2-4(a)(3), because no statute authorizes a written test, staff suggested that the statute may need to be updated to include this requirement. There was some concern from Committee members about whether the issuing of the State license or the certification by the Association of Boxing Commissioners should come first. Committee members expressed concern that the proposed regulation, requiring certification after licensure, was backwards.
- In KAR 128-2-4(a)(4) and KAR 128-2-9(a)(4), Committee members suggested clarification that this is done annually by changing the sentence to read “an annual physical examination.”

- Committee members were concerned about the fact that KAR 128-2-12 was just being brought forward for approval since it appears that the Commission has been collecting these fees for some time without legal authority. It also was recommended that the fee schedule come before the State Rules and Regulations Board (temporary rules committee) so the fees could be put into effect immediately. A question was raised concerning who collected the fees and how the moneys were being used.
- In KAR 128-2-13, staff questioned where the authority is found to authorize the Commission to issue permits. The Committee questioned what types of tests were being performed under KAR 128-4-2. Mr. Davis stated that tests for alcohol and marijuana, if suspected, were the only ones performed at this time. The Committee thought that tests also should be done to disclose steroid use, HIV, and hepatitis.
- Also in KAR 128-2-13, Committee members recommended that the term “commission” be changed to “commissioner” in authorizing additional medical examinations. In a related concern with KAR 128-4-7(f), a Committee member questioned how the referee was selected. Mr. Davis stated that statement should read the referee shall be selected by the “commission” and approved by the “commissioner.” The Committee recommended that the agency go back through the regulations and check on the use of words “commission” and “commissioner” throughout.
- A Committee member questioned why the promoter and not the commissioner selected the physician in KAR 128-4-5. Mr. Davis said he would look into changing this.
- Staff noted that in KAR 128-3-1 and KAR 128-4-6, the payment of athletic tax is in conflict with the statute.
- Committee members suggested that the term “professional” as used in the titles be used consistently throughout the rules and regulations.

The Committee requested that a copy of the budget for the Commission for the past two years be provided to the Committee members. The Committee further requested that the agency appear before the Committee with corrections and explanations at the next meeting. Ms. Befort and Mr. Davis were thanked by the Chairperson for their presentation before the Committee.

Mr. Wilke distributed a proposed bill as requested by Senator Brownlee concerning the adoption of rules and regulations by the Kansas Lottery Commission to bring that agency in line with the Rules and Regulations Filing Act (Attachment 9). After a discussion by Committee members, it was the consensus of the Committee to wait until the next meeting so that Senator Brownlee could participate in the discussion.

Chairperson Holmes asked for any other business that needed to come before the Committee.

*Representative John Faber moved to have a bill prepared requiring the Department of Wildlife and Parks to meet the same standards for its state-owned lodging cabins as required for privately owned facilities in the lodging rules and regulations under the Department of Health and Environment. Senator Ostmeyer seconded the motion. The motion carried.*

Chairperson Holmes stated that the next meeting would be January 14, 2008. The meeting was adjourned at 4:50 p.m.

### **Committee Comments on Proposed Rules and Regulations**

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; management and personnel; food; equipment, utensils, and linens; water, plumbing, and waste; physical facilities; poisonous or toxic materials; compliance and enforcement; and mobile food establishments, pushcarts, and temporary food establishments promulgated by the Kansas Department of Agriculture and had the following comment.

KAR 28-23-16. The Committee questions the Department of Agriculture's authority to revoke this regulation since it is a regulation of the Kansas Department of Health and Environment. The Committee asks that appropriate individuals from the two agencies meet and determine whether the Department of Agriculture has the authority to revoke this regulation. Please inform the Committee as to the determination.

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; general licensure requirements; contestant; judge; manager; matchmaker; physician; promoter; referee; second; timekeeper; fees for licenses and identification cards; permits; tickets and taxes; announcer; contestant; judge; matchmaker; physician; promoter; referee; second; timekeeper; inspector; professional boxing, professional kickboxing, and professional full-contact karate contests; professional mixed martial arts contests; professional boxing; professional kickboxing; and professional mixed martial arts contests and had the following comments.

KAR 128-1-1. The Committee notes that there is a difference in the definition of the term "contestant" in the statutes and in the regulation before the Committee. Please correct.

KAR 128-2-1. The Committee thinks that there should be a requirement of notice for any change in name whether it be a stage name or a real name of a licensee. Please clarify the language in terms of "business" days or calendar days.

KAR 128-2-4. The Committee questions the authority of the agency to require a written test. Please inform the Committee why the agency believes it has this authority. The Committee also thinks that the certification of the Association of Boxing Commissioners should come before the issuance of the license. Please explain this policy decision. The Committee further questions the responsibilities of the physician under this regulation. Is the physician required to annually submit the written certification? Please clarify.

KAR 128-2-8. The Committee questions whether the suspension provided in this regulation would be subject to appeal under the Kansas Administrative Procedure

Act. Please consider inclusion of this language providing for the appeal process in this regulation and any other appropriate regulation in this set.

KAR 128-2-9. In subsection (a)(4), the Committee questions whether the agency intends to have this as an annual requirement. Please review all similar rules and regulations for inclusion of this language. See the similar comment on KAR 128-2-4.

KAR 128-2-12. The Committee is concerned that the agency has been imposing the proposed fees as outlined in this regulation. The Committee questions the agency's authority to impose these fees when the rules and regulations have yet to be adopted. Please provide to the Committee a copy of the FY 2008 budget and the proposed budget for FY 2009, plus the amount paid to each staff member to date in FY 2008. Please provide detailed information demonstrating the amount of money collected from each source and how those moneys have been expended from the first time any fee was imposed or any money was expended from these sources. Please also provide detailed information regarding the amount, if any, collected for professional wrestling events and how such funds were spent. The Committee notes that according to case law agencies are directed to adopt fees in rules and regulations only in amounts to cover expenses. Please respond accordingly.

KAR 128-2-13. The Committee is concerned that the agency does not have the authority to require a permit fee. Please indicate where the statutory authority exists to impose this fee. Likewise, the Committee is unable to identify statutory authority to require the acquisition of a bond. Please identify the statutory authority authorizing this policy.

KAR 128-3-1. In subsection (g), the Committee questions the agency's authority to impose the athletic tax on professional wrestling since the tax applies only to regulated sports. Professional wrestling is not a regulated sport. The Committee is quite concerned with the fact that complimentary tickets are calculated as a part of gross receipts but are not subject to the sales tax. The Committee believes this is inappropriate policy. The Committee questions the policy that allows the promoter and the Boxing Commissioner to determine who may receive complimentary tickets.

KAR 128-4-2. The Committee thinks that the agency should require the testing for such things as HIV, hepatitis, and steroids as well as any other drugs or alcohol. In this rule and regulation, the Committee is concerned that the authority to make decisions rests with the Boxing Commission rather than with the Commissioner. It appears to the Committee that many decisions need to be made in an environment where all of the Commission members could not be present. Please review and explain to the Committee why this policy decision was made. In addition, in subsection (j) the Committee questions how approval of the substitute contestant can be made by the Commission. Please respond.

KAR 128-4-5. The Committee questions the policy of allowing the physician to be selected by the promoter. Please review this policy to determine whether this is the appropriate policy.

KAR 128-4-6. In subsection (b), the Committee questions the authority for the promoter to pay the state athletic tax to the Commission. Please review and respond with an explanation.

KAR 128-4-7. In subsection (f), the Committee thinks it is inappropriate for the referee to be selected by the promoter. Please review and respond appropriately.

KAR 128-4a-1. The Committee questions the use of the term "chief inspector" because it is not a defined term. Should this be a defined term? Please review and respond accordingly.

KAR 128-6-1. The Committee believes that a national database would be necessary in order to track participants. Is there a national database and would the Kansas Boxing Commission have access to it?

Comment. Throughout these rules and regulations, authority is given to the Commission rather than the Commissioner. The Committee believes that in many instances the authority to respond on a timely basis should be given to the Commissioner.

Request. The Committee is extremely concerned with the imposition of fees which have yet to be adopted. The Committee requests that the agency immediately fashion temporary rules and regulations imposing the fees and arrange to appear before the State Rules and Regulations Board.

Request. The Committee requests that the agency include a total drug screening requirement in the rules and regulations.

Request. The Committee requests that the agency contact other states to determine whether it is possible to share positive test results for contestants.

Request. Please include in the agency's rules and regulations the authority for the physician to extract body fluids in order to complete appropriate tests.

Observation. The Committee thinks the agency is operating this program without proper authority.

Request. The Committee expects representatives of the agency to appear at the next meeting of the Joint Committee on Administrative Rules and Regulations to address each of the concerns and issues raised in this letter. Included in this would be an explanation of how the agency proposes to resolve each of these issues.

**Kansas Behavioral Sciences Regulatory Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning educational requirements (Psychology) and had the following comment.

KAR 102-1-12. In subsection (b), the Committee suggests language be added to clarify what would happen to an individual who began the program before March 10, 2006.



**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; report of address, name, or personnel change by business; commercial applicator examinations; pesticide business license, renewal, and uncertified employee fees; government agency registration and renewal fees; application fee for commercial applicator's certificate; examination fees; certified private applicator's certificate fee; and pest control technician registration and renewal fees and had the following comment.

KAR 4-13-3. In subsection (a)(10)(B), the Committee thinks that the use of the term "certification" in this regulation should perhaps be "licensure." Please review and correct if necessary.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; management and personnel; food; equipment, utensils, and linens; water, plumbing, and waste; physical facilities; poisonous or toxic materials; compliance and enforcement; and mobile food establishments, pushcarts, and temporary food establishments promulgated by the Kansas Department of Agriculture and had the following comment.

KAR 28-23-16. The Committee questions the Department of Agriculture's authority to revoke this regulation since it is a regulation of the Kansas Department of Health and Environment. The Committee asks that appropriate individuals from the two agencies meet and determine if the Department of Agriculture has the authority to revoke this regulation. Please inform the Committee as to the determination.

Prepared by Judy Glasgow  
Edited by Raney Gilliland

Approved by Committee on:

January 14, 2008

(Date)