SENATE BILL No. 252

By Joint Committee on Administrative Rules and Regulations

12-27

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

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

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

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

(2) Notwithstanding the provisions of this section:

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

(i) Designated by the agency as precedent;

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

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

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

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

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

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

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

(ii) The internal management of or organization of the agency.
No such statement of agency policy listed in clauses (i) and (ii) of this
subparagraph may be relied on to bind the general public.

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

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

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

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

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

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

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

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

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

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

(2) "Environmental rule and regulation" means:

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

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

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

(4) "Rule and regulation," "rule," and "regulation" means a standard,
requirement or other policy of general application that has the force and
effect of law, including amendments or revocations thereof, issued or
adopted by a state agency to implement or interpret legislation.
(5) "Rulemaking" shall have the meaning ascribed to it in K.S.A. 77-
602, and amendments thereto.
(6) "Small employer" means any person, firm, corporation,
partnership or association that employs not more than 50 employees, the
majority of whom are employed within this state.
(7) "State agency" means any officer, department, bureau, division,
board, authority, agency, commission or institution of this state, except the
judicial and legislative branches, which is authorized by law to promulgate
rules and regulations concerning the administration, enforcement or
interpretation of any law of this state.
Sec. 2. K.S.A. 2011 Supp. 77-421 is hereby amended to read as
follows: 77-421. (a) (1) Except as provided by subsection (a)(2),
subsection (a)(3) or subsection (a)(4), prior to the adoption of any
permanent rule and regulation or any temporary rule and regulation which
is required to be adopted as a temporary rule and regulation in order to
comply with the requirements of the statute authorizing the same and after
any such rule and regulation has been approved by the secretary of
administration and the attorney general, the adopting state agency shall
give at least 60 days' notice of its intended action in the Kansas register
and to the secretary of state and to the joint committee on administrative
rules and regulations established by K.S.A. 77-436, and amendments
thereto. The notice shall be provided to the secretary of state and to the
chairperson, vice chairperson, ranking minority member of the joint
committee and legislative research department and shall be published in
the Kansas register. A complete copy of all proposed rules and regulations
and the complete economic impact statement required by K.S.A. 77-416,
and amendments thereto, shall accompany the notice sent to the secretary
of state. The notice shall contain:
(A) A summary of the substance of the proposed rules and
regulations;
(B) a summary of the economic impact statement indicating the
estimated economic impact on governmental agencies or units, persons
subject to the proposed rules and regulations and the general public;
(C) a summary of the environmental benefit statement, if applicable,
indicating the need for the proposed rules and regulations;
(D) the address where a complete copy of the proposed rules and
regulations, the complete economic impact statement, the environmental
benefit statement, if applicable, required by K.S.A. 77-416, and
amendments thereto, may be obtained;
(E) the time and place of the public hearing to be held; the manner in
which interested parties may present their views; and

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

(2) Prior to adopting any rule and regulation which establishes
seasons and fixes bag, creel, possession, size or length limits for the taking
or possession of wildlife and after such rule and regulation has been
approved by the secretary of administration and the attorney general, the
secretary of the department of wildlife and parks, parks and tourism shall
give at least 30 days' notice of its intended action in the Kansas register
and to the secretary of state and to the joint committee on administrative
rules and regulations created pursuant to K.S.A. 77-436, and amendments
thereto. All other provisions of subsection (a)(1) shall apply to such rules
and regulations, except that the statement required by subsection (a)(1)(E)
shall state that the period of 30 days' notice constitutes a public comment
period on such rules and regulations.

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

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

(b) (1) On the date of the hearing, all interested parties shall be given
reasonable opportunity to present their views or arguments on adoption of
the rule and regulation, either orally or in writing. At the time it adopts or
amends a rule and regulation, the state agency shall prepare a concise
statement of the principal reasons for adopting the rule and regulation or
amendment thereto, including:
(A) The agency's reasons for not accepting substantial arguments
made in testimony and comments; and
(B) the reasons for any substantial change between the text of the
proposed adopted or amended rule and regulation contained in the
published notice of the proposed adoption or amendment of the rule and
regulation and the text of the rule and regulation as finally adopted.
(2) Whenever a state agency is required by any other statute to give
notice and hold a hearing before adopting, amending, reviving or revoking
a rule and regulation, the state agency, in lieu of following the
requirements or statutory procedure set out in such other law, may give
notice and hold hearings on proposed rules and regulations in the manner
prescribed by this section.
(3) Notwithstanding the other provisions of this section, the Kansas
parole board and the secretary of corrections, may give notice or an
opportunity to be heard to any inmate in the custody of the secretary of
corrections with regard to the adoption of any rule and regulation, but the
secretary shall not be required to give such notice or opportunity.
(c) (1) The agency shall initiate new rulemaking proceedings under
this act, if a state agency proposes to adopt a final rule and regulation that:
(A) Differs in subject matter or effect in any material respect from the
rule and regulation as originally proposed; and
(B) is not a logical outgrowth of the rule and regulation as originally
proposed.
(2) In accordance with subsection (a), the period for public comment
required by K.S.A. 77-421, and amendments thereto, may be shortened to
not less than 30 days.
(3) For the purposes of this provision, a rule and regulation is not the
logical outgrowth of the rule and regulation as originally proposed if a
person affected by the final rule and regulation was not put on notice that
such person's interests were affected in the rulemaking.
(d) When, pursuant to this or any other statute, a state agency holds a
hearing on the adoption of a proposed rule and regulation, the agency shall
cause written minutes or other records, including a record maintained on
sound recording tape or on any electronically accessed media or any
combination of written or electronically accessed media records of the
hearing to be made. If the proposed rule and regulation is adopted and
becomes effective, the state agency shall maintain, for not less than three
years after its effective date, such minutes or other records, together with
(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

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

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