

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 3, 2017
Room 159-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Sharon Schwartz, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Tom Hawk
Senator Garrett Love
Senator Ralph Ostmeyer
Representative Steve Huebert
Representative Jerry Lunn
Representative Janice Pauls
Representative Jim Ward

Members Absent

Representative Ed Trimmer
Representative Valdenia Winn

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Joanna Dolan, Kansas Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Jenna Seematter, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Amber Smith, Kansas Corporation Commission
Jay Hedrick, Kansas Board of Veterinary Examiners
Aaron Oleen, Staff Attorney, Department of Agriculture
Dr. Bill Brown, Kansas Livestock Commissioner
Stacy Bond, Counsel for the Kansas State Board of Healing Arts
Adam Roorbach, Kansas Boxing Commissioner, on behalf of the Department of
Commerce and the Kansas Athletic Commission
Ann Landis, Attorney, Department of Revenue
Ron Hein, Hein Governmental Consulting, LLC, Legislative Counsel for RAI Services
Company
R. E. "Tuck" Duncan, Kansas Vapers Association

Other Attendees

See [attached list](#).

The meeting was called to order at 10:00 a.m. by Chairperson Schmidt.

Senator Hawk moved for approval of the Committee minutes for November 16, 2016. Motion seconded by Senator Faust-Goudeau. Motion carried on a voice vote.

Review and Comment on proposed rules and regulations noticed for hearing by the State Corporation Commission

KAR 82-16-1, definitions; KAR 82-16-2, renewable energy goal and report; KAR 82-16-3, revocation (was administrative penalties); KAR 82-16-4, retail revenue requirement; KAR 82-16-5, revocation (was certification of renewable energy resources); KAR 82-16-6, renewable energy credit program.

Amber Smith, Kansas Corporation Commission, appeared before the Committee to address the proposed rules and regulations. Ms. Smith stated the proposed rules and regulations were drafted in consultation with interested stakeholders for the administration of the Renewable Energy Standards Act enacted in 2015 House Sub. for SB 91. The proposed rules and regulations are necessary to update existing Article 16 of the Electric Utility Renewable Energy Standards to comply with recent changes to the Renewable Energy Standards Act, she said. Ms. Smith noted the Commission does not anticipate an economic impact resulting from the adoption of the proposed edits to existing regulations.

Responding to questions from the Committee, Ms. Smith indicated the definition changes are a formality to clarify and bring definitions up-to-date. When asked about the history of KAR 82-16-3, Ms. Smith noted she is not familiar with the history of penalties.

Review and Comment on proposed rules and regulations noticed for hearing by the Board of Veterinary Examiners

KAR 70-5-1, fees.

Jay Hedrick, Executive Director, State Board of Veterinary Examiners, appeared before the Committee to address the proposed rule and regulation. Dr. Hedrick noted the proposed rule and regulation is an amended regulation that allows the agency to recover costs of annual premise inspection from the registrant.

Responding to a question from the Committee, Dr. Hedrick indicated there are no plans to reduce license fees at this time, noting the Board hopes to add online license renewal capabilities in the near future. Responding to a question concerning use of the term “noncompliance,” Dr. Hedrick indicated the Department of Administration requested the change from “noncompliance” to “audit and compliance” in proposed KAR 70-5-1 to reflect statutory language.

Review and Comment on proposed rules and regulations noticed for hearing by the Department of Agriculture Division of Animal Health

KAR 9-3-9, certificate of veterinary inspection, importation and intrastate movement requirements and permits; KAR 9-3-10, brucellosis.

Aaron Oleen, Staff Attorney, Department of Agriculture, appeared before the Committee to address the proposed rules and regulations. Dr. Bill Brown, Kansas Livestock Commissioner, was also in attendance to assist with the presentation. Mr. Oleen stated the changes proposed in KAR 9-3-9 will give certain domesticated cervid producers outside Kansas more time, from 30 days to 45 days, to draw blood from an animal, receive brucellosis test results, and, if the results are negative, get the necessary certificate of veterinary inspection prior to moving the animal into Kansas. KAR 9-3-10 makes explicit the animal health commissioner's quarantine powers as to imported cervids and brucellosis.

Responding to questions from the Committee, Dr. Brown stated there have not been any known cases of brucellosis within Kansas or elsewhere in the United States for some time. Dr. Brown noted the brucellosis bacteria can affect humans as well as animals. Dr. Brown stated the reason for extending the time element from 30 days to 45 days is to give the producer extra time to get the blood sample and test results. Dr. Brown indicated no cases of chronic wasting disease have been reported in the state's farmed cervids for some time, but the disease is present among wild cervids, especially in the northwest part of the state.

Review and Comment on proposed rules and regulations noticed for hearing by the Board of Healing Arts

KAR 100-29-18, dry needling, education and practice requirements; KAR 100-29-19, dry needling, informed consent; KAR 100-29-20, dry needling, recordkeeping; KAR 100-29-21, dry needling, board requests for documentation.

Stacy Bond, Counsel for the Kansas State Board of Healing Arts, addressed the Committee regarding the proposed rule and regulation. Ms. Bond stated the proposed rules and regulations provide education and training requirements for physical therapists to practice dry needling as required by the Physical Therapist Licensure Act as amended by 2016 HB 2615.

Responding to a question from the Committee, Ms. Bond stated the definition of "dry needling therapy" is set in statute. She indicated online study is not allowed by the regulations. Ms. Bond noted there is a difference between acupuncture and dry needling with acupuncture not addressed in these rules and regulations. Ms. Bond noted only a few schools in the country, none of them in Kansas, currently offer dry needling instruction; however, the Board is looking at other schools that may meet the requirements and will be listed on the Board's website if appropriate for the training.

Written testimony in support of the proposed rules and regulations was submitted by Susie Harms, President, Kansas Physical Therapy Association ([Attachment 1](#)).

Review and Comment on rules and regulations noticed for hearing by the Kansas Athletic Commission

KAR 128-6-4, professional mixed martial arts contests.

Adam Roorbach, Kansas Boxing Commissioner, on behalf of the Department of Commerce and the Kansas Athletic Commission, appeared before the Committee to address the proposed rule and regulation. Mr. Roorbach noted the Association of Boxing Commissioners (ABC) recently passed changes to the unified rules of mixed martial arts to help ensure fighter safety. The main changes to the regulation alter the definition of a “grounded fighter” and restrict opponents from kicking or kneeing the fighter when grounded. Under the proposed changes, it will be considered a foul to advance towards a fighter with fingers extended toward the opponent’s face. Mr. Roorbach also indicated the proposed rule and regulation makes some slight modifications to fighter attire.

Responding to questions from the Committee, Mr. Roorbach stated amateurs are not allowed to fight across weight classes, but professionals are if they are within a certain number of pounds of each other in weight. Mr. Roorbach stated the proposed rule and regulation is in line with ABC rules.

Review and Comment on rules and regulations noticed for hearing by the Department of Revenue

KAR 92-57-1, definitions; KAR 92-57-2, certificate of registration; KAR 92-57-3, imposition of tax; KAR 92-57-4, books, records, and other documents required of distributor or retail dealer, access to premises; KAR 92-57-5, monthly tax returns, remittance of tax, deficiencies.

Anna Landis, Attorney, Department of Revenue, appeared before the Committee to address the proposed rules and regulations ([Attachment 2](#)). Ms. Landis stated the proposed rules and regulations are proposed to clarify the intent of 2015 Senate Sub. for HB 2109, as enacted and as amended by 2016 SB 149, mainly, who is required to register with the State, remit the consumable material tax, retain records, and file reports (facets not addressed by the statutes).

Ron Hein, Hein Governmental Consulting, LLC, appearing as legislative counsel for RAI Services Company, voiced support for the proposed rules and regulations ([Attachment 3](#)). Mr. Hein stated RAI Services Company, a subsidiary of Reynolds American, Inc., strongly supports the proposed rules and regulations and believes the tax is imposed fairly on all distributors and retailers of consumable material for electronic cigarettes.

Tuck Duncan, representing the Kansas Vapers Association, appeared before the Committee to voice the following concerns relating to the rules and regulations:

- The Legislature violated its own rules when the issue did not have a proper hearing in a legislative committee during the regular session and was included in a conference committee report that passed the Legislature;
- Probable costs to the Department of Revenue and small businesses in the collection of the tax are unknown; the Legislature should review those costs;

- The Legislature should look at the definition of “consumable materials”;
- The Department of Revenue sent letters indicating the procedures in the proposed rules and regulations should be followed now (the tax went into effect on January 1, 2017); however, the rules and regulations have not yet had a public hearing; and
- The proposed rules and regulations are not available for review on the agency’s website.

Mr. Duncan provided written testimony after the meeting ([Attachment 4](#)).

COMMITTEE DISCUSSION AND COMMENTS

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 82-16-1, definitions; KAR 82-16-2, renewable energy goal and report; KAR 82-16-3, revocation (was administrative penalties); KAR 82-16-4, retail revenue requirement; KAR 82-16-5, revocation (was certification of renewable energy resources); KAR 82-16-6, renewable energy credit program. After discussion, the Committee had no comments.

State Board of Veterinary Examiners. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 70-5-1, fees. After discussion, the Committee had no comments.

Kansas Department of Agriculture, Division of Animal Health. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 9-3-9, certificate of veterinary inspection, importation and intrastate movement requirements and permits; KAR 9-3-10, brucellosis. After discussion, the Committee had no comments.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 100-29-18, dry needling, education and practice requirements; KAR 100-29-19, dry needling, informed consent; KAR 100-29-20, dry needling, recordkeeping; KAR 100-29-21, dry needling, board requests for documentation. After discussion, the Committee had no comments.

Kansas Department of Commerce, Kansas Athletic Commission. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 128-6-4, professional mixed martial arts contests. After discussion, the Committee had no comments.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 92-57-1, definitions; KAR 92-57-2, certificate of registration; KAR 92-57-3, imposition of tax; KAR 92-57-4, books, records, and other documents required of distributor or retail dealer, access to premises; KAR 92-57-5, monthly tax returns, remittance of tax, deficiencies. After discussion, the Committee had the following comment.

Comment. The Committee wishes to express its disappointment with the agency in terms of the timeliness of the promulgation of these rules and regulations. The Legislature adopted the bill during the 2015 Legislative Session and with 2016 SB 149 extended the deadline for implementation until January 1, 2017, and yet the agency sought approval of these rules and regulations on a temporary basis at the end of December 2016. These rules and regulations were not approved by the State Rules and Regulations Board and, therefore, will not go into effect until after the tax implementation date of January 1, 2017.

The meeting was adjourned at 11:45 a.m. The next meeting of the Committee is scheduled for “on call of chair.”

Prepared by Shirley Jepson
Edited by Jill Shelley, Joanna Dolan, and Raney
Gilliland

Approved by the Committee on:

March 6, 2017

(Date)