

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2280** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking lines 8 through 34;

By striking all on pages 2 and 3;

On page 4, by striking lines 1 through 35 and inserting:

"Section 1. K.S.A. 2017 Supp. 77-416 is hereby amended to read as follows: 77-416.
(a) Every state agency shall file with the secretary of state every rule and regulation adopted by it and every amendment and revocation thereof in the manner prescribed by the secretary of state. Each rule and regulation shall include a citation to the statutory section or sections being implemented or interpreted and a citation of the authority pursuant to which it, or any part thereof, was adopted. Every rule and regulation filed in the office of the secretary of state shall be accompanied by a copy of the economic impact statement required by subsection (b) and a copy of the environmental benefit statement if required by subsection (d). A copy of any document adopted by reference in a rule and regulation shall be available from the state agency ~~which~~ that adopted the rule and regulation upon request by any person interested therein. The state agency, under the direction of the secretary of state, shall number each section with a distinguishing number and, in making a compilation of the rules and regulations, the sections shall be arranged in numerical order. A decimal system of numbering shall be prohibited.

(b) (1) At the time of drafting a proposed rule and regulation or amendment to an existing rule and regulation, the state agency shall consider the economic impact of ~~such the~~ proposed rule and regulation ~~or amendment upon all governmental agencies or units and all persons which will be subject thereto and upon the general public. Prior to giving notice of a hearing on a proposed rule and regulation,~~. The state agency shall prepare an economic impact statement that shall include:

(A) ~~A~~ An analysis, brief description, and cost and benefit quantification of the proposed rules and regulations and what is intended to be accomplished by their adoption. If the approach chosen by the Kansas agency to address the policy issue is different from that utilized by agencies of contiguous states or of the federal government, the economic impact statement shall include an explanation of why the Kansas agency's rule and regulation differs;

(B) whether the proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law;

~~(C) a description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof; and~~

~~(D) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. The state agency may consult with other state agencies when preparing the economic impact statement; and~~

~~(E) a description of businesses that would be directly affected by the proposed rules and regulations, the benefits of the proposed rules and regulations and measures taken to minimize the impact of the proposed rules and regulations on business and economic development within the state of Kansas.~~

(C) an analysis specifically addressing the following factors:

(i) The extent to which the rule and regulation will enhance or restrict business activities and growth;

(ii) the economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, business sectors, public utility ratepayers, individuals and local governmental units that will be affected by the proposed rule and regulation and on the state economy as a whole;

(iii) the businesses that would be directly affected by the proposed rule and regulation;

(iv) the benefits of the proposed rule and regulation compared to the cost;

(v) measures taken by the agency to minimize the cost and impact of the proposed rule and regulation on business and economic development within the state of Kansas, local government and individuals;

(vi) an estimate, expressed as a single dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units or members of the public and a determination of whether those costs will exceed \$3,000,000 over any two-year period; and

(vii) an estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units and

individuals as a result of the proposed rule, expressed as a single dollar figure.

(2) The state agency shall consult with the League of Kansas municipalities, Kansas association of counties and the Kansas association of school boards, as appropriate, when preparing the economic impact statement of a proposed rule and regulation which increases or decreases revenues of cities, counties or school districts or imposes functions or responsibilities on cities, counties or school districts ~~which~~ that will increase their expenditures or fiscal liability. The agency shall consult and solicit information from businesses, business associations, local governmental units, state agencies or institutions and members of the public that may be affected by the proposed rule and regulation or that may provide relevant information.

(3) As required pursuant to the provisions of K.S.A. 77-420(d), and amendments thereto, the state agency shall reevaluate and, when necessary, update the economic impact statement when directed to do so by the director of the budget and, if approved by the director of the budget, shall submit the revised economic impact statement at the time of filing a rule and regulation with the secretary of state. If a public hearing was held prior to the adoption of the rule and regulation, a state agency at the time of filing a rule and regulation with the secretary of state shall include as a part of the economic impact statement a statement specifying the time and place at which the hearing was held and the attendance at the hearing. A copy of the current economic impact statement shall be available from the state agency upon request by any party interested therein.

~~(c) Upon request of the state rules and regulations board, the joint committee on administrative rules and regulations or the chairperson of either committee or board,~~ Pursuant to the provisions of K.S.A. 77-420, and amendments thereto, the director of the budget shall review

the economic impact statement prepared by any state agency and shall prepare a supplemental or revised statement and an independent analysis by the director of the budget of the cost and the factors as set forth in subsection (b)(1)(A) and (C) and subsection (e). If possible, the supplemental or revised statement shall include a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It also shall include a statement, if determinable or reasonably foreseeable, of the immediate and long-range economic impact of the rule and regulation upon persons subject thereto, small employers and the general public. If, after careful investigation, it is determined that no dollar estimate is possible, the statement shall set forth the reasons why no dollar estimate can be given. Every state agency is directed to cooperate with the division of the budget in the preparation of any statement pursuant to this subsection when, and to the extent, requested by the director of the budget. The director of the budget shall follow the procedures set forth in K.S.A. 77-420, and amendments thereto, in evaluating and accepting or rejecting the proposed rule and regulation. No agency shall submit a rule and regulation to the secretary of state for filing before receiving the approval of the director of the budget as provided in this subsection and K.S.A. 77-420, and amendments thereto.

(d) At the time of drafting a proposed environmental rule and regulation or amendment to an existing environmental rule and regulation, the state agency shall consider the environmental benefit of such proposed rule and regulation or amendment. Prior to giving notice of a hearing on a proposed rule and regulation, the state agency shall prepare an environmental benefit statement that shall include a description of the need for and the environmental benefits ~~which that~~ will likely accrue as the result of the proposed rule and regulation or amendment. The description shall summarize, when applicable, research indicating the level of risk to the public

health or the environment being removed or controlled by the proposed rule and regulation or amendment. When specific contaminants are to be controlled by the proposed rule and regulation or amendment, the description shall indicate the level at which the contaminants are considered harmful according to currently available research. The state agency may consult with other state agencies when preparing the environmental benefit statement. The state agency shall reevaluate and, when necessary, update the statement at the time of filing a rule and regulation with the secretary of state. A copy of the current environmental benefit statement shall be available from the state agency upon request by any party interested therein.

(e) In addition to the requirements of subsection (b), the economic impact statement for all environmental rules and regulations shall include:

(1) A description of the capital and annual costs of compliance with the proposed rules and regulations, and the persons who will bear those costs;

(2) a description of the initial and annual costs of implementing and enforcing the proposed rules and regulations, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs;

(3) a description of the costs ~~which~~ that would likely accrue if the proposed rules and regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the rules and regulations; and

(4) a detailed statement of the data and methodology used in estimating the costs used in the statement.

(f) In 2021, the legislative post audit committee shall direct the legislative division of post audit to conduct an audit to study:

(1) The accuracy of economic impact statements submitted by state agencies pursuant to this section for the immediately preceding seven years;

(2) the impact the review by the director of the budget has had on the accuracy of economic impact statements submitted by state agencies pursuant to this section; and

(3) whether the \$3,000,000 cost figure is the appropriate amount of economic impact to trigger the hearing procedure required by K.S.A. 77-420(a), and amendments thereto.

Sec. 2. K.S.A. 2017 Supp. 77-420 is hereby amended to read as follows: 77-420. (a) (1) Every rule and regulation proposed to be adopted by any state agency, before being submitted to the secretary of administration and the attorney general as required by this section, shall be submitted with the economic impact statement for the rule and regulation required by K.S.A. 77-416, and amendments thereto, to the director of the budget for review of the accuracy and completeness of the agency's economic impact statement. The director of the budget shall make an independent determination of the amount of implementation and compliance costs reasonably expected to be incurred by or passed along to businesses, local government and individuals over any two-year period as a result of the proposed rule and regulation and shall conduct an independent analysis of the factors set forth in K.S.A. 77-416(b)(1)(A) and (C) and (e), and amendments thereto. Every rule and regulation approved by the director of the budget shall be stamped as approved, and the date of approval shall be indicated.

(2) If the director independently determines that a proposed rule and regulation submitted or resubmitted by the agency will not result in implementation or compliance costs of more than \$3,000,000 for businesses, local government or individuals in any two-year period, the director shall:

(A) Approve the rule and regulation if the director independently determines that the economic impact statement is accurate, demonstrates a complete analysis as required by K.S.A. 77-416(b)(1)(A) and (C) and (e), and amendments thereto, and the director concurs with the economic impact statement; or

(B) disapprove the rule and regulation.

(3) If the director of the budget determines that the proposed rule and regulation will result in implementation and compliance costs of more than \$3,000,000 for businesses, local government or individuals in any two-year period, the director of the budget shall:

(A) Approve the proposed rule and regulation, if the agency, prior to the submission or the resubmission of a rule and regulation to the director, holds a public hearing and finds that the costs of the proposed rule and regulation have been accurately determined and are necessary for achieving legislative intent and the director, after an independent analysis, concurs with the agency's findings and analysis and approves the economic impact statement; or

(B) disapprove the proposed rule and regulation.

(b) The director of the budget shall submit an annual report to the legislature and to the joint committee on administrative rules and regulations on the first day of the 2019 regular legislative session and subsequent regular legislative sessions on all rules and regulations approved or denied by the director. The report shall include the text of each rule and regulation reviewed, the final economic impact statement and a summary of the director's analysis supporting the decision to approve or reject the rule and regulation. The director shall immediately submit a separate report to the legislature, if in session, and the joint committee on administrative rules and regulations upon the approval or denial of a rule or regulation with costs

determined to be greater than \$3,000,000 for businesses, local government or individuals over any two-year period. The report shall include an analysis of the agency's and the director's decisions with respect to the necessity of the cost of the rule and regulation to achieve legislative intent.

(c) Every rule and regulation proposed to be adopted by any state agency that has been approved by the director of the budget pursuant to the provisions of subsection (a), before being submitted to the attorney general under this section, shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar subject to such requirements as to organization, style, orthography and grammar as the secretary may adopt. Every rule and regulation submitted to the secretary of administration under this subsection ~~(a)~~ shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection ~~(a)~~ shall be stamped as approved and the date of such approval shall be indicated therein.

~~(b)~~(d) Every rule and regulation proposed by any state agency ~~which~~ that has been approved by the director of the budget and the secretary of administration as provided in ~~subsection~~ subsections (a) and (c) before being adopted or filed shall be submitted to the attorney general for an opinion as to the legality of the same, including whether the making of such rule and regulation is within the authority conferred by law on the state agency. The attorney general shall promptly furnish an opinion as to the legality of the proposed rule and regulation so submitted. Every rule and regulation submitted to the attorney general under this subsection ~~(b)~~ shall be accompanied by a copy of any document which is adopted by reference by the rule and

regulation. Every rule and regulation approved by the attorney general under this subsection ~~(b)~~ shall be stamped as approved and the date of such approval shall be indicated therein.

~~(e)~~(e) No rule and regulation shall be filed by the secretary of state unless:

(1) The rule and regulation has been approved by the director of the budget;

(2) the organization, style, orthography and grammar have been approved by the secretary of administration;

~~(2)~~(3) the rule and regulation has been approved in writing by the attorney general as to legality;

~~(3)~~(4) the rule and regulation has been formally adopted by the state agency after it has been approved by the director of the budget, the secretary of administration and the attorney general and is accompanied by a certified or other formal statement of adoption when adoption is by an executive officer of a state agency, or by a certified copy of the roll call vote required for its adoption by K.S.A. 77-421, and amendments thereto, when adoption is by a board, commission, authority or other similar body;

~~(4)~~(5) the rule and regulation to be filed is accompanied by a copy of the economic impact statement as provided by K.S.A. 77-416, and amendments thereto, that has been reviewed and approved by the director of the budget as provided by subsection (a); and

~~(5)~~(6) the rule and regulation to be filed is accompanied by a copy of the environmental benefit statement required by K.S.A. 77-416, and amendments thereto, if applicable.

Sec. 3. K.S.A. 2017 Supp. 77-420a is hereby amended to read as follows: 77-420a. No rule and regulation shall be adopted prior to the effective date of the statute authorizing its adoption, but prior to the effective date of such statute, the proposed rule and regulation may be

submitted to the director of the budget, the secretary of administration and to the attorney general for approval as required by K.S.A. 77-420, and amendments thereto, and notice of the proposed rule and regulation may be given and a hearing held thereon in the manner provided by K.S.A. 77-421, and amendments thereto.

Sec. 4. K.S.A. 2017 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 director of the budget, 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 wildlife, 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 director of the budget, the secretary of administration and the attorney general, the secretary 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 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 secretary of corrections may give notice or an opportunity to be heard to any inmate in the custody of the secretary with regard to the adoption of any rule and regulation.

(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) 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 rule making.

(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 any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(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. 5. K.S.A. 2017 Supp. 77-422 is hereby amended to read as follows: 77-422. (a) A rule and regulation may be adopted by a state agency as a temporary rule and regulation if the state agency and the state rules and regulations board finds that the preservation of the public peace, health, safety or welfare necessitates or makes desirable putting such rule and regulation into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this act or prior to the effective date prescribed by K.S.A. 77-426, and amendments thereto.

(b) Temporary rules and regulations may be adopted without the giving of notice and the holding of a hearing thereon.

(c) (1) A temporary rule and regulation shall take effect:

(A) After approval by the director of the budget, the secretary of administration and the attorney general as provided by K.S.A. 77-420, and amendments thereto;

(B) after approval by the state rules and regulations board as provided by K.S.A. 77-423, and amendments thereto; and

(C) upon filing with the secretary of state.

(2) The effective date of all or specific parts of a temporary rule and regulation may be delayed to a date later than its filing date if the delayed effective date of such rule and regulation, or specific parts thereof, is clearly expressed in the body of such rule and regulation.

(3) A temporary rule and regulation shall be effective for a period not to exceed 120 days except that, for good cause, a state agency may request that a temporary rule and regulation may be renewed one time for an additional period not to exceed 120 days.

(d) A temporary rule and regulation which amends an existing rule and regulation shall have the effect of suspending the force and effect of the existing rule and regulation until such time as the temporary rule and regulation is no longer effective. In such case, at the time the temporary rule and regulation ceases to be effective, the existing permanent rule and regulation which was amended by the temporary rule and regulation shall be in full force and effect unless such existing rule and regulation is otherwise amended, revoked or suspended as provided by law.

(e) Temporary rules and regulations shall be numbered in accordance with the numbering arrangement approved by the secretary of state and otherwise shall conform to the approval, adoption and filing requirements of this act, insofar as the same can be made applicable.";

Also on page 4, in line 36, by striking "2016" and inserting "2017";

On page 5, in line 4, by striking "and"; in line 7, after "chairperson" by inserting "and the chairperson of the senate committee on ways and means in even-numbered years and the chairperson of the house of representatives committee on appropriations in odd-numbered years"; in line 18, by striking "2016" and inserting "2017";

On page 6, in line 8, by striking "As"; by striking all in lines 9 through 14; in line 15, by striking all before "The"; in line 23, following "(d)" by inserting "The committee shall issue a report to the legislature following each meeting making comments and recommendations and indicating concerns about any proposed rule and regulation. Such report shall be made available to each agency that had proposed rules and regulations reviewed at such meeting during the agency's public comment period for such proposed rules and regulations required by K.S.A. 77-421, and amendments thereto. If having a final report completed by the public hearing required by K.S.A. 77-421, and amendments thereto, is impractical, a preliminary report shall be made available to the agency containing the committee's comments. The preliminary report shall be incorporated into the final report and made available to each agency.

(e)";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also on page 6, in line 40, by striking "2016" and inserting "2017"; also in line 40, after the comma by inserting "77-420, 77-420a, 77-421, 77-422,"; in line 43, by striking "statute book" and inserting "Kansas register";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, by striking "review" and inserting "approval"; also in line 2,

by striking "state agencies" and inserting "the director of the budget"; in line 3, after the second semicolon by inserting "report made by committee; audit;"; in line 4, by striking "2016" and inserting "2017"; in line 5, after the comma by inserting "77-420, 77-420a, 77-421, 77-422,";

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House