

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 12, 2018

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 12, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the May 2018 meeting were approved.

Present were:

Members: Senators Ernie Harris, Perry Clark, Alice Forgy Kerr, and Julie Raque-Adams; and Representatives David Hale, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Leanne Diakov, Board of Medical Licensure; Julie Campbell, Board of Cosmetology; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Joe Bilby, Brent Burchett, Meagan Pickett, Clint Quarles, Department of Agriculture; Sean Alteri, Chris Ewing, Tony Hatton, Department of Environmental Protection; Amy Barker, Ashley Short, Department of Corrections; Virginia Moore, Rachel Morgan, Commission for Deaf and Hard of Hearing; Steve Davis, Jamie, Gitzinger, Office of Inspector General; Melissa Banks, Christa Bell, Elizabeth Caywood, Phillip Smith, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, June 12, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees. Leanne Diakov, general counsel, represented the board.

201 KAR 9:031. Examinations.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Cosmetology

201 KAR 12:082 & E. Education requirements and school administration. Julie Campbell, board administrator, represented the board.

In response to questions by Co-Chair Harris, Ms. Campbell stated that Kentucky's cosmetology schools had great job placement statistics. HB 260 of the 2017 Regular Session of the General Assembly removed the apprentice program, which was a restricted licensure program. The removal of that program significantly enhanced job placement rates. The board was licensing 150 to 300 students per month. Hair braiding was no longer in the jurisdiction of the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, 18, 21, and 29 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 21 to clarify that the scenario described is for the enrollment correction fee. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to clarify that a "limited facility permit" shall be for a threading facility, lash extension facility, and makeup facility. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE: Department of Fish and Wildlife Resources

301 KAR 2:221. Waterfowl seasons and limits. Amber Arnett, counsel; Steve Beam, Wildlife Division Director; and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:222. Waterfowl hunting requirements on public lands.

In response to a question by Senator Kerr, Ms. Waldrop stated that the Sauerheber and Jenny Hole units were part of the Sloughs WMA.

In response to a question by Co-Chair Hale, Ms. Waldrop stated that waterfowl hunting was halted at Barren River, Grayson Lake, Pennyrile Lake, and Rough River Lake due to the conflict between hunting times and peak park visitation times. The hunts were intended to help with nuisance issues but conflicted with times of increased park visitation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Department of Agriculture: Office of Agricultural Marketing: Industrial Hemp

302 KAR 50:050. THC Sampling and testing; post-testing actions. Joe Bilby, general counsel; Brent Burchett, director of plant marketing; and Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Clark, Mr. Burchett stated that hemp crops were tested for a zero and three tenths (0.3) percent THC limit. Plants that exceeded the limit were destroyed. Last year, less than one (1) percent of the hemp crop had been destroyed due to exceeding the THC limit. Exceedance was not deliberate on the part of the grower. Senator Clark stated that the limit was artificial. Mr. Burchett stated that the limit was artificial but internationally recognized and established at the federal level.

ENERGY AND ENVIRONMENT: Department for Environmental Protection: Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NOx annual trading program. Sean Alteri, director, and Tony Hatton, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Alteri stated that these administrative regulations referenced the federal requirements without change. Kentucky sources were in compliance with cross-state air pollution requirements; therefore, from a practical standpoint there was no change for regulated utilities. These administrative regulations allowed Kentucky to account for emissions reductions in the State Implementation Plan (SIP). The Utility Information Exchange of Kentucky supported these administrative regulations during the public comment period.

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NOx ozone season group 2 trading program.

401 KAR 51:260. Cross-State Air Pollution Rule (CSAPR) SO2 group 1 trading program.

JUSTICE AND PUBLIC SAFETY: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Amy Barker, assistant general counsel, and Ashley Short, corrections program administrator, represented the department.

In response to a question by Senator Kerr, Ms. Barker stated that suicide prevention measures included mental health assistance and physical prevention. A person was referred for mental health assistance as needed. If an officer witnessed something concerning about a person's mental health, the person could be referred as a result.

There may also be an inmate observer to physically monitor a person. Mental health assistance was available on location, depending on the facility.

EDUCATION AND WORKFORCE DEVELOPMENT: Commission on the Deaf and Hard of Hearing: Telecommunication Devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired. Virginia Moore, executive director, and Rachel Morgan, executive staff interpreter, represented the commission.

In response to questions by Co-Chair Harris, Ms. Moore stated that, at first, the commission collected six (6) cents per month per land-line phone. Later, cell phone providers were included, bringing all fees to four (4) cents per month per phone. The commission got two (2) of that four (4) cents per month per phone. The commission and the relay service received approximately \$97,000 per month from the fees. Some states also collected from internet providers. Kentucky was not currently doing that, although some internet providers were contributing voluntarily. The commission may consider making internet provider contributions mandatory in the future. The captioning referenced in these administrative regulations pertained to telephone conversation captioning.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Interpreter Referral Services

735 KAR 2:010. Definitions for 735 KAR Chapter 2.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:030. Interpreter qualifications.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to refer to an "assigned" interpreter, instead of a "freelance" interpreter. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:040. Interpreter protocols.

In response to a question by Senator Kerr, Ms. Moore stated that attire protocols were necessary to ensure a dress code that was professional and appropriate for each venue. Ms. Morgan stated that there were dress code standards for visually impaired clientele. For example, wearing blue might be a problem for some clients with certain visual impairments. Typically, an interpreter should wear all black.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were

approved.

735 KAR 2:050. Processing of requests for services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to use the term "certified," rather than "freelance," interpreter. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 2:060. Grievance procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) use the term "interpreter," rather than "freelance" or "assigned" interpreter; and (b) clarify the burden of proof and types of grievance findings for terminating contractual or employment relationships, or to cease providing services for a state agency; and (2) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General

906 KAR 1:200. Use of civil money penalty funds collected from certified long-term care facilities. Steve Davis, inspector general, and Jamie Gitzinger, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 5 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:090 & E. Child-care center licensure. Christa Bell, director, and Elizabeth Caywood, acting commissioner, represented the division.

In response to a question by Co-Chair Harris, Ms. Bell stated that 922 KAR 2:090 & E and 922 KAR 2:180 & E revised background check standards based on federal requirements. The fingerprint-based background checks included checking systems of the FBI, state criminal repository, national sex offender registry, and child abuse and neglect registry. HB 374 of the 2017 Regular Session of the General Assembly established the authority for more robust background checks. Prior to this, child-care provider staff background checks were only state, not national.

922 KAR 2:100 & E. Certification of Family Child-Care Homes.

922 KAR 2:111E. Repeal of 922 KAR 2:110.

Day Care

922 KAR 2:120 & E. Child-care center health and safety standards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4, 7, 8, and 10 through 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:171E. Repeal of 922 KAR 2:170 and 922 KAR 2:210.

922 KAR 2:180 & E. Requirements for registered child care providers in the Child Care Assistance Program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3 through 5, 7, 8, and 10 to comply with the drafting requirements of KRS chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:190 & E. Civil penalties.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply

with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:270 & E. Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes.

In response to a question by Senator Clark, Ms. Bell stated that this program's incentives were based on quality and derived from the Race to the Top grant system. This system established more flexibility and was intended to serve the most vulnerable children in high-quality child-care centers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the June 12, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT: Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky professional and provisional teacher certificates.

Administrative Certificates

16 KAR 5:030. Proficiency evaluation.

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

TOURISM, ARTS AND HERITAGE: Department of Fish and Wildlife Resources: Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

301 KAR 2:228. Sandhill crane hunting requirements.

JUSTICE AND PUBLIC SAFETY: Department of Juvenile Justice: Child Welfare

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

TRANSPORTATION: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

ENERGY AND ENVIRONMENT: Public Service Commission: Utilities

807 KAR 5:022. Gas service.

807 KAR 5:026. Gas service; gathering systems.

PUBLIC PROTECTION: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:110. Criteria for expanded local jurisdiction.

815 KAR 7:120. Kentucky Building Code.

815 KAR 7:125. Kentucky Residential Code.

Division of Heating, Ventilation and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:011. Repeal of 815 KAR 8:007 and 815 KAR 8:045.

815 KAR 8:070. Installation permits.

815 KAR 8:080. Inspections and requests.

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection Safety: Sanitation

902 KAR 10:040. Kentucky youth camps.

Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

The subcommittee adjourned at 1:40 p.m. The next meeting of the subcommittee is tentatively scheduled for July 10, 2018, at 1 p.m.