

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the January Meeting

January 8, 2018

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 8, 2018, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representatives Mary Lou Marzian, Jason Petrie, and Tommy Turner.

Guests: Becky Gilpatrick, Higher Education Assistance Authority; Stafford Easterling, Personnel Board; Todd Renner, Lisa Swiger, Department of Revenue; Julie Campbell, Quincy Ward, Board of Hairdressers & Cosmetologists; Nathan Goldman, Board of Nursing; Shan Dutta, Elizabeth Morgan, Board of Medical Imaging & Radiation Therapy; Amber Arnett, David Bruce, Karen Waldrop, Department of Fish and Wildlife Resources; Sean Alteri, Melissa Duff, Aaron Keatley, Division for Air Quality; Amy Barker, Office of Legal Services; William Codell, LaShana Harris, Department of Juvenile Justice; Ann D'Angelo, Jeff Wolfe, Department of Transportation, Kevin Brown, Amy Peabody, Earl Simms, Board of Education; Todd Allen, Amanda Ellis, Department of Education, Stephen Humphress, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Joe Donohue, Department of Financial Institutions.

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

The Administrative Regulation Review Subcommittee met on Monday, January 8, 2018, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Higher Education Assistance Authority

11 KAR 4:080. Student aid applications. Becky Gilpatrick, director of student aid, represented the authority.

Kentucky Educational Excellence Scholarship Program

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

In response to questions by Co-Chair Harris, Ms. Gilpatrick stated that, in the case of dual credit, the weighted college-level grade was used toward calculating scholarship qualification. Generally, for a student taking a dual-credit class at a specific institution and if the student later enrolled in that institution, the grade and credit earned during the dual-credit period was credited toward the student's transcript at that institution. For a student transferring to a different institution, most institutions applied the credit, but not the grade, to the student's transcript. The authority had established counseling to assist students with the ramifications of dual-credit scholarships.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD

101 KAR 1:325. Probationary periods. Stafford Easterling, general counsel, represented the board.

In response to a question by Co-Chair Harris, Mr. Easterling stated that changes to probationary periods were initiated by the appropriate cabinets and consolidated into this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend 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.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:240. Nexus standard for corporations and pass-through entities. Todd Renner, executive director, and Lisa Swiger, tax policy consultant, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to add "member" and "shareholder" to the provision that one is "doing business" in Kentucky if he or she is a partner in a pass-through entity that is doing business in Kentucky. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Hairdressers and Cosmetologists

201 KAR 12:100. Sanitation standards. Julie Campbell, board administrator, and Quincy Ward, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and Sections 8, 11, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:095. Retired nurse licensure status. Nathan Goldman, general counsel, represented the board.

201 KAR 20:400. Delegation of nursing tasks.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy

201 KAR 46:010. Definitions for 201 KAR Chapter 46. Shan Dutta, assistant attorney general, and Elizabeth Morgan, executive director, represented the board.

In response to a question by Co-Chair Harris, Ms. Morgan stated that the independent study program was implemented long ago, prior to the availability of formal education related to medical imaging and radiation therapy. The program was no longer appropriate.

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.

201 KAR 46:020. Fees.

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to

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

201 KAR 46:081. Limited x-ray machine operator.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 7, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:095. Administrative subpoena.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 5:010. License agent applications and agreements. Amber Arnett, counsel; David Bruce, director of engineering and IT; and Karen Waldrop Deputy Commissioner, represented the department.

In response to questions by Representative Turner, Ms. Waldrop stated that the department was initiating a new licensing system. Licensing agents remained, but the terminal system was being replaced with a Web-based, online system. Mr. Bruce stated that initially some agents were opposed to the new system, but after introduction to the ease of use, many agents changed to support the system. A few smaller stores elected to not renew as licensing agents due to the new system. The department had anticipated that approximately twenty (20) percent of licensing agents would not renew due to the changes; however, the actual loss was only around fourteen (14) percent.

Representative Turner stated that he was concerned that some small, rural stores without online capabilities would lose sales because of opting out of the new system, thus having reduced store traffic. Ms. Waldrop stated that the new system had some features that might increase store traffic. For example, with the new system a discount coupon toward purchases could be printed out with the license. Representative Turner requested to be recorded as voting in opposition to 301 KAR 5:010 and 5:020.

In response to questions by Co-Chair Harris, Ms. Waldrop stated that the letter to the subcommittee from the department (relating to the fee increase for the senior or disabled

combination hunting and fishing license for residents) was revised to correct language regarding the commission. The department's commitments in the letter remained the same.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY 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.

301 KAR 5:020. License agent requirements and responsibilities.

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

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Air Quality: New Source Standards

401 KAR 59:015. New indirect heat exchangers. Sean Alteri, division director, and Aaron Keatley, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Alteri stated that these administrative regulations applied to industrial boilers, boilers that produced heat or processed steam, and boilers for chemical processes. The division amended these administrative regulations after comments to clarify workplace practice standards during periods of startup and shutdown.

Existing Source Standards

401 KAR 61:015. Existing indirect heat exchangers.

JUSTICE AND PUBLIC SAFETY CABINET: Law Enforcement Council

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant general counsel, represented the council.

In response to a question by Co-Chair Harris, Ms. Barker stated that more staff were retiring than being hired. There was also limited availability for basic training. This administrative regulation allowed trained, experienced staff to be hired without as many basic academy hours required.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 10 and 15

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

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

505 KAR 1:170. Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA). William Codell, attorney, and LaShana Harris, assistant director, represented the department.

In response to questions by Co-Chair Harris, Ms. Harris stated that implementation of this administrative regulation would cost the department approximately four (4) million dollars and require approximately eighty (80) new staff. Mr. Codell stated that the primary penalty for failure to comply with federal PREA regulations was a five (5) percent reduction in the amount of certain federal grant funds. Funds were still available if the department certified that, upon release of the funds, that money would be used exclusively to comply with federal PREA requirements. The penalty funding that would be withheld for failure to comply was in the low six (6) figures, much lower than the four (4) million that would be required to implement this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend Section 1 and various policies to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Division of Traffic Operations: Traffic

603 KAR 5:025. Fully controlled access highways. Ann D'Angelo, assistant general counsel, and Jeff Wolfe, division director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) 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.

EDUCATION AND WORKFORCE DEVELOPMENT: Kentucky Board of Education: Department of Education: Charter Schools

701 KAR 8:010. Charter school student application, lottery, and enrollment. Kevin Brown, general counsel and associate commissioner; Amy Peabody, attorney; and Earl Simms, charter schools division director, represented the department.

Representative Marzian requested to be recorded as voting in opposition to 701 KAR 8:010, 8:020, 8:030, and 8:040.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and for-mating requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

701 KAR 8:020. Valuation of charter school authorizers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 7, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

701 KAR 8:030. Charter school appeal process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction

704 KAR 3:370. Kentucky framework for personnel evaluation. Kevin Brown, general counsel and associate commissioner, and Todd Allen, deputy general counsel represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control:
Licensing

804 KAR 4:241. Repeal of 804 KAR 4:240. Stephen Humphress, general counsel, represented the department.

Alcoholic Beverage Control Board

804 KAR 6:011. Repeal of 804 KAR 6:010.

Malt Beverage Equipment, Supplies, and Service

804 KAR 11:010. Equipment and supplies.

In response to questions by Co-Chair Harris, Mr. Humphress stated that KRS 446.080(3) stated that a law was not retroactive unless specifically stated to be retroactive. Licensees that provided coolers prior to the change were “grandfathered in” in this administrative regulation. These were not the large coolers, such as in grocery stores, but the smaller, point-of-purchase coolers usually located near register checkout areas.

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

Department of Insurance: Commissioner’s Office: Group and Blanket Health Insurance

806 KAR 18:011. Repeal of 806 KAR 18:010. Patrick O’Connor II, deputy commissioner, represented the office.

806 KAR 18:030. Group health insurance coordination of benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 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.

Department of Financial Institutions: Division of Depository Institutions: Credit Unions

808 KAR 3:050. Conduct. Joe Donohue, general counsel, and Charles Vice, commissioner, represented the division.

In response to a question by Co-Chair Harris, Mr. Donohue stated that the fee frequency was changed to comply with legislation from the 2017 regular session of the General Assembly.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend the RELATES TO and NECESSITY-TY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Harris introduced Representative David Hale who was appointed to the subcommittee to fill the House vacancy. Representative Marzian made a motion, seconded by Representative Turner, that Representative Hale be nominated for House Co-Chair. Representative Hale accepted the nomination. Representative Marzian made a motion, seconded by Representative Turner, to end House Co-Chair nominations. Representative Hale was unanimously endorsed by all House subcommittee members as House Co-Chair of the subcommittee.

Representative Hale stated that he was honored by the nomination and confidence of his colleagues. He looked forward to working with this subcommittee.

The following administrative regulations were deferred or removed from the January 8, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration

16 KAR 1:016. Standards for certified teacher leader.

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

501 KAR 6:280. Risk and needs assessment.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Benefit Exchange: Kentucky Health Benefit Exchange

900 KAR 10:031. Repeal of 900 KAR 10:030 and 900 KAR 10:100.

Office of Health Policy: Certificate of Need

900 KAR 6:130. Certificate of Need criteria for physician exemption.

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

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

Department for Medicaid Services: Managed Care

907 KAR 17:005. Definitions for 907 KAR Chapter 17.

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

907 KAR 17:015. Managed care organization requirements and policies relating to providers.

907 KAR 17:020. Managed care organization service and service coverage requirements and policies.

907 KAR 17:026. Repeal of 907 KAR 17:025 and 907 KAR 17:030.

907 KAR 17:035. External independent third-party.

Department for Community Based Services: Division of Family Support: K-TAP,
Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:040 & E. Procedures for determining initial and continuing eligibility.

Division of Family Support: Division of Child Care: Daycare

922 KAR 2:160 & E. Child Care Assistance Program.

922 KAR 2:260 & E. Child care service appeals.

The subcommittee adjourned at 1:50 p.m. until February 12, 2018, at 1 p.m.