

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the May Meeting

May 8, 2018

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 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 Perry B. Clark, and Alice Forgy Kerr; Representatives Mary Lou Marzian, Jason Petrie, and Tommy Turner.

Guests: Arica Brandford, Ruby King, Board of Nursing; Louis Kelly, Board of Physical Therapy; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, James Erwin, Hannah Gibson, Chris Kleymyer, Randy White, Department of Corrections; Ann Dangelo, Jamir Davis, Wanda Ballard Repasky, Department of Transportation; Steve Humphress, Carol Beth Martin, Trena Summers, Department of Alcoholic Beverage Control; Elizabeth Caywood, Maribeth Schneber-Rhemrev, Department for Community Based Services.

LRC Staff: Senators Ernie Harris, Perry Clark, and Alice Forgy Kerr; and Representatives David Hale, Mary Lou Marzian, Jason Petrie, and Tommy Turner.

The Administrative Regulation Review Subcommittee met on Tuesday, May 8, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Arica Brandford, nursing consultant, and Ruby King, branch manager, represented the board.

In response to questions by Co-Chair Harris, Ms. King stated that all applicants were required to submit to a background check upon initial application; however, the annual renewal process did not include the background check. The board did not expect the

background check requirements to overwhelm the system. The fee for the background check was paid for by the applicant.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 6 to include the simplified criminal background check requirements for a reinstatement applicant. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:070. Licensure by examination.

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

201 KAR 20:110. Licensure by endorsement.

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

201 KAR 20:225. Reinstatement of license.

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

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Annual Licensure Renewal Application. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 7, 9, and 11 to comply with the drafting and for-matting requirements of KRS Chapter 13A; (2) to amend Sections 7 and

9 to include the simplified criminal background check requirements for a SANE credential applicant; and (3) to up-date the annual credential renewal applications. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 4, and 15 to comply with the drafting and format-ting requirements of KRS Chapter 13A; (2) to amend Sections 2 and 4 to include the simplified criminal background check requirements for a dialysis technician applicant; (3) to amend Section 12 to lower the name change fee from thirty-five (35) dollars to twenty-five (25) dollars for consistency; and (4) to update the Application for Renewal of Dialysis Technician Credential. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 22:020 & E. Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

In response to questions by Co-Chair Harris, Mr. Kelly stated that the background check requirements applied to initial application or application after licensure lapse. The background check did not apply to renewals. The board did not anticipate the background check requirements to overwhelm the system. The fee for the background check was paid for by the applicant.

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

201 KAR 22:040 & E. Procedure for renewal or reinstatement of a credential for physical therapist or physical therapist assistant.

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, 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.

201 KAR 22:070 & E. Requirements for foreign-educated physical therapists.

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.

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Amber Arnett, staff attorney; Steve Beam, Division of Wildlife Director; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Representative Turner, Mr. Beam stated that the check-in and check-out procedures were performed at kiosks at the entrance or entrances to the WMA. The purpose was for data collection regarding intensity of small game hunting. The kiosks might not be at each gate, but will be at multiple, convenient locations. The tag or card will be provided at the kiosks. Employees will not continuously monitor the kiosks but will ensure that an adequate supply of tags or cards is always available.

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

GENERAL GOVERNMENT: Department of Agriculture: Division of Regulation: Amusement Rides

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions. Clint Quarles, staff attorney, represented the division.

In response to questions by Co-Chair Harris, Mr. Quarles stated that requirements for aerial recreational devices were already established in 302 KAR Chapter 17. This package included “clean-up” amendments. There was not a gap in coverage for these requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:081. Repeal of 302 KAR 16:080.

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to include “turbo bungees,” which was the synonym for “Euro bungees.” Without objection, and with agreement of the agency, the amendments were approved.

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

501 KAR 6:170. Green River Correctional Complex. Amy Barker, assistant general counsel; James Erwin, interim commissioner; and Hannah Gibson, program administrator, represented the department.

In response to a question by Co-Chair Harris, Mr. Erwin stated that restricted housing was the segregation unit for inmates who exhibited disciplinary problems during incarceration. These inmates were served three (3) daily meals; however, they were not allowed to have much extra food from the canteen in the unit. Graduation from the restricted unit to a transition unit incentivized good behavior by allowing extra food from the canteen.

501 KAR 6:270. Probation and parole policies and procedures.

In response to questions by Representative Petrie, Ms. Gibson stated that these policies were being updated to ensure efficiency and effectiveness. Changes included eliminating the pre-sentence investigation update, which was duplicative. Ms. Barker stated that some changes were for compliance with interstate commerce requirements.

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

Capital Punishment

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned per-son. Amy Barker, assistant general counsel, and James Erwin, interim 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 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:310. Pre-execution medical actions.

In response to questions by Representative Marzian, Ms. Barker stated that this administrative regulation required, under certain circumstances, a psychologist to review the condemned inmate's department medical records for a diagnosis of intellectual disability or an IQ test score of seventy-five (75) or lower. For an intellectual disability, it was the responsibility of the condemned person to pursue the matter through the court system, and the Department of Corrections had limited ability to participate. The process was intended to occur within thirty (30) days of the warrant if it had not been initiated prior.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. With-out objection, and with agreement of the agency, the amendments were approved.

501 KAR 16:330. Lethal injection protocols.

Representative Marzian requested to be recorded as voting in opposition to this administrative regulation and 501 KAR 16:340.

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

501 KAR 16:340. Electrocutation protocol.

TRANSPORTATION CABINET: Office of Civil Rights and Small Business Development: Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged business enterprises. Ann D'Angelo, assistant general counsel; Jamir Davis, executive director; and Wanda Repasky, contract attorney, represented the office.

In response to questions by Co-Chair Harris, Ms. Repasky stated that the Office of Civil Rights and Small Business Development had been operating, although under various names, since at least 1989. Mr. Davis stated that the office processed certifications of

disadvantaged businesses pursuant to the federal program. Approximately 400 businesses were certified as disadvantaged businesses with the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 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:
Quotas

804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050. Steve Humphress, general counsel; Carol Beth Martin, malt beverage administrator; and Trena Summers, distilled spirits administrator, represented the department.

In response to questions by Co-Chair Harris and Representative Petrie, Mr. Humphress stated that because the package license quotas were established by statute, the administrative regulation being repealed was no longer necessary. There would no longer be a quota for drink licenses. Cities still had authority to establish related ordinances. A licensee could transfer or sell a license, but the licenses had very little value. The department did not expect an increase in sales of these licenses. There was no policy shift other than no arbitrary limit on the number of licenses.

In response to a question by Co-Chair Hale, Mr. Humphress and Ms. Martin stated that the repeal applied essentially to the quota for drink licenses because the package license quotas were established by statute.

In response to a question by Co-Chair Harris, Ms. Martin stated that the prior package license quotas were set at one (1) license per 2,300 population. Mr. Humphress stated that there would always be at least two (2) licenses available to prevent a monopoly.

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

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Elizabeth Caywood, chief of staff, and Maribeth Schneber-Rhemrev, represented the division.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: 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.

ENERGY AND ENVIRONMENT CABINET: 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) NO_x annual trading program.

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NO_x 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 CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Li-censing: Administration

601 KAR 2:030 & E. Ignition interlock.

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

902 KAR 10:040. Kentucky youth camps.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

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

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

922 KAR 2:090 & E. Child-care center licensure.

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

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

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

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

922 KAR 2:190 & E. Civil penalties.

The subcommittee adjourned at 1:35 p.m. The next meeting of the subcommittee is tentatively scheduled for June 12, 2018, at 1 p.m.