

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October Meeting of the 2018 Interim

October 9, 2018

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2018, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, 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 and Jason Petrie.

Guests: Todd Renner, Department of Revenue; Nathan Goldman, Board of Nursing; Amber Arnett, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Law Enforcement Council; Todd Allen, Chad Collins, Department of Education; B. Dale Hamblin, Robert Swisher, Department of Workers' Claims; Jeremy Sylvester, Occupational Safety and Health Review Commission; Stephanie Bowker, Patrick O'Connor, Department of Insurance; Jonathan Scott, Department for Medicaid Services; Stephanie Brammer-Barnes, David McMahan, Office Inspector General.

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 Tuesday, October 9, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration

103 KAR 15:041. Repeal of 103 KAR 15:040 and 103 KAR 15:090. Todd Renner, executive director of tax policy, represented the department.

103 KAR 15:110. Ethanol tax credit.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 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.

103 KAR 15:120. Cellulosic ethanol tax credit.

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

103 KAR 15:140. Biodiesel tax credit.

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

Income Tax; Corporations

103 KAR 16:011. Repeal of 103 KAR 16:010, 103 KAR 16: 210, 103 KAR 16: 310, and 103 KAR 16:360.

Income Tax; Individual

103 KAR 17:042. Repeal of 103 KAR 17:041.

103 KAR 17:100. Division of income between married individuals filing separate tax returns.

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

103 KAR 17:130. Individual income tax – military personnel – nonresidents.

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

103 KAR 17:140. Individual income tax – reciprocity – nonresidents.

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

Income Tax; Withholding

103 KAR 18:180. Kentucky economic development acts wage assessment.

103 KAR 18:191. Repeal of 103 KAR 18:190, 103 KAR 18:200, 103 KAR 18: 210, and 103 KAR 18:220.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Nathan Goldman, general counsel, represented the agency.

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

301 KAR 1:015. Boat and motor restrictions. Amber Arnett, counsel, and Karen Waldrop, deputy commissioner, represented the department.

301 KAR 1:132. Sale of live bait.

Game

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.

In response to questions by Representative Marzian, Ms. Waldrop stated that this administrative regulation pertained to the Western Goose Zone, to which migratory geese came from St. John's Bay. That was a small population of geese in the past; however, the population was now stable and hunting opportunities could be expanded. This administrative regulation was unrelated to matters of deer management.

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.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

In response to a question by Senator Clark, Ms. Waldrop stated that the fifteen (15) day nonresident fish license, which was rarely used, was being discontinued. Nonresidents could still purchase the seven (7) day license.

In response to questions by Representative Petrie, Ms. Waldrop stated that approximately eight (8) months ago the department increased hunting and fishing fees for Kentucky residents. These fee increases were part of the department's long-term, strategic plan to address costs. Many department fees had not been raised in the past decade and, in some cases, longer. The department intended to analyze the fee structure every four (4) to five (5) years. These increases were based on a two (2) to three (3) year analysis of agency expenditures. All department revenue was generated from fees or federal funds.

In response to questions by Co-Chair Hale, Ms. Waldrop stated that the nonresident youth elk hunt fee was being increased from forty (40) dollars to \$200, making the fee commensurate with those for similar permits. Very few nonresident youth elk hunt permits had been is-sued. The department would follow up with more detailed revenue information, but these fee increases were forecast to provide approximately \$1.9 million more in revenue.

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 deer management permit language for consistency. Without objection, and with agreement of the agency, the amendments were approved.

Wildlife

301 KAR 4:090. Buying and selling of inedible wildlife parts.

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

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian: Livestock Sanitation

302 KAR 20:211. Repeal of 302 KAR 20:210. Clint Quarles, counsel, represented the department.

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

302 KAR 20:221. Repeal of 302 KAR 20:220.

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

302 KAR 20:231. Repeal of 302 KAR 20:230.

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

302 KAR 20:541. Repeal of 302 KAR 20:054.

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

302 KAR 20:561. Repeal of 302 KAR 20:056.

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

302 KAR 20:571. Repeal of 302 KAR 20:057.

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

302 KAR 20:581. Repeal of 302 KAR 20:058.

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

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

Purchase of Agricultural Conservation Easement Corporation

302 KAR 100:011. Repeal of 302 KAR 100:010.

In response to questions by Co-Chair Harris, Mr. Quarles stated that there was still a voluntary ability for the department to receive land donations. There was currently a purchase project in the Fort Campbell area. The voluntary program was implemented by statute.

302 KAR 100:021. Repeal of 302 KAR 100:020.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections:
Kentucky Law Enforcement Council

503 KAR 1:110 & E. Department of Criminal justice Training basic training graduation requirements; records. Amy Barker, assistant general counsel, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of
Education: Department of Education: School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Todd Allen, deputy general counsel, represented the department, and Chad Collins, general counsel, represented the Kentucky High School Athletic Association.

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

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers' Compensation Medical Fee Schedule for Physicians. B. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department.

In response to questions by Co-Chair Harris, Mr. Swisher stated that reimbursement was based on the CPT code, of which there were 7,400. The fee schedule was updated every two (2) years. Stakeholders were involved in fee reimbursement development, and reimbursement rates were adjusted in response to stakeholder input. Generally,

reimbursement rates in-creased; however, increases or decreases were capped at twenty (20) percent juxtaposed to the prior rate. There were no significant increases.

In response to a question by Representative Petrie, Mr. Hamblin stated that, in order to determine reimbursement rates, the department contracted with a data-collection agency that analyzed rates pursuant to individual CPT codes.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 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.

Occupational Safety and Health Review Commission

803 KAR 50:010. Hearings: procedure, disposition. Jeremy Sylvester, executive director, rep-resented the commission.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 3, 9, 15, 16, 19, 20, 26 through 29, 33, 36, 38, 40, 43, and 55 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates. Stephanie Bowker, program manager, and Patrick O'Connor II, 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 through 3, 5 through 12, 14, 16 through 17, 19 through 20, 22, and 26 through 27 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreements of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Commissioner's Office: Administration

900 KAR 1:091. Repeal of 900 KAR 1:090. Jonathan Scott, regulatory and legislative advisor, represented the office.

Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP). Stephanie Brammer – Barnes, regulation coordinator, and David McMahan, program manager, represented the office.

In response to questions by Co-Chair Harris, Ms. Brammer – Barnes stated that these requirements were mandatory for state-owned facilities and voluntary for privately owned facilities. Mr. McMahan stated that the disqualifier for checks with insufficient funds was being re-moved due to frequency and because most incidents did not result in follow-up action. Ms. Brammer – Barnes stated that background disqualifiers for other programs in the cabinet were similar but sometimes differed slightly, depending on the program.

In response to questions by Representative Petrie, Ms. Brammer – Barnes stated that the program was voluntary since 2012 because legislation to make the background checks mandatory had yet to be approved by the General Assembly. The office agreed to provide follow-up data to the subcommittee showing participation percentages among facilities that may voluntarily participate in the background checks. The cost of a fingerprint-supported back-ground check was sixty-three (63) dollars. Many facilities opted to use a name-based, state-only background check, which was twenty (20) dollars.

Department for Medicaid Services: Medicaid Services

907 KAR 1:121. Repeal of 907 KAR 1:120 and 907 KAR 1:130. Johnathan Scott, regulatory and legislative advisor, represented the department.

The following administrative regulations were deferred or removed from the October 9, 2018, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:100 & E. Evaluation of precinct election officers.

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances. Tony Cotto, executive advisor, represented the board.

Mr. Cotto requested deferral of this administrative regulation with the intent of withdrawing then refileing. A motion was made and seconded, to agree to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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

501 KAR 6:999. Corrections secured policies and procedures.

Pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6), the subcommittee needs to go into closed session to review this administrative regulation.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:030 & E. Ignition interlock.

LABOR CABINET: Workers' Compensation Funding Commission

803 KAR 30:021. Repeal of 803 KAR 030:020.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction

815 KAR 2:030. Vehicle identification.

815 KAR 2:040. Fees and refunds.

Building Code Enforcement: Elevator Safety

815 KAR 4:071. Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070.

Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

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

815 KAR 8:010. Licensing requirements for master contractors and journeyman HVAC mechanics.

815 KAR 8:030. Apprentice HVAC mechanic registration and certification requirements.

815 KAR 8:091. Repeal of 815 KAR 008:020, 815 KAR 008:035, 815 KAR 008:050, 815 KAR 008:060, 815 KAR 008:090, and 815 KAR 008:095.

Division of Plumbing: Boilers and Pressure Vessels

815 KAR 15:080. Boiler and pressure vessel licenses.

Plumbing

815 KAR 20:030. Plumbing licenses.

815 KAR 20:041. Repeal of 815 KAR 020:012, 815 KAR 020:015, 815 KAR 020:018, 815 KAR 020:032, 815 KAR 020:034, and 815 KAR 020:040.

Division of Fire Prevention: Fire Protection, Sprinkler Contractors, and Inspectors

815 KAR 22:011. Repeal of 815 KAR 022:010.

Building Code Enforcement: Manufactured Homes and Recreational Vehicles

815 KAR 25:001. Definitions for 815 KAR Chapter 025.

815 KAR 25:020. Recreational vehicles.

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.

815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes.

815 KAR 25:081. Repeal of 815 KAR 025:070 and 815 KAR 025:080.

815 KAR 25:100. Alternative dispute resolution and mediation program.

Electrical Division

815 KAR 35:015. Certification of electrical inspectors.

815 KAR 35:020. Electrical inspections.

815 KAR 35:080. Electrical code of ethics.

815 KAR 35:101. Repeal of 815 KAR 035:100.

Department of Charitable Gaming

820 KAR 1:001. Definitions.

820 KAR 1:005. Charitable gaming licenses and exemptions.

820 KAR 1:011. Repeal of 820 KAR 1:010, 1:015, 1:016, 1:017, 1:026, 1:027, 1:028, 1:029, 1:033, 1:034, 1:036, 1:044, 1:056, 1:058, 1:100, 1:110, 1:120.

820 KAR 1:025. Reports.

820 KAR 1:032. Pulltabs.

820 KAR 1:042. Bingo.

820 KAR 1:050. Raffles.

820 KAR 1:055. Charity fundraising event standards.

820 KAR 1:057. Recordkeeping.

820 KAR 1:060. Prohibited conduct.

820 KAR 1:125. Gaming inspections.

820 KAR 1:130. Administrative actions.

820 KAR 1:135. Disposal of gaming supplies.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Radiology

902 KAR 100:018. Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090.

902 KAR 100:052. Specific domestic licenses of broad scope for by product material.

Department of Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:025. Technical requirements.

921 KAR 3:035. Certification process.

The subcommittee adjourned at 1:45 p.m. The next meeting of the subcommittee is tentatively scheduled for November 13, 2018, at 1 p.m.