

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December Meeting December 11, 2018

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 11, 2018, at 1:00 PM, in Room 171 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; Senator Julie Raque Adams, Representatives Mary Lou Marzian and Tommy Turner.

Guests: John Steffen Registry of Election Finance; Gary Morris, Todd Renner, Department of Revenue; Joseph Bowman, Alan Hurst, Kentucky Retirement Systems; Keith Poynter, Board of Chiropractic Examiners; Tony Cotto, Board of Psychology; Jared Downs, Stacy Grider, Board of Licensure for Occupational Therapy; Steve Beam, Eric Gibson, Gabe Jenkins, Evan Jones, Karen Waldrop, Department of Fish and Wildlife Resources; Melissa Duff, Department for Environmental Protection; Julie Foster, Justice and Public Safety Cabinet; Ann Dangelo, Steve Drake, Department of Transportation; Todd Allen, Christa Hall, Scott U'Sellis, Department of Education; Estee Jackson, Lisa King, Olivia Orrender, Workers' Compensation Funding Commission; Steve Humphress, Marc Manley, Department of Alcoholic Beverage Control; Michael Mullins, Jim Vicini, Department for Natural Resources; Julie Brooks, Jenny Glass, Mike Tuggle, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Laura Begin, Christa Bell, Elizabeth Caywood, Department for Community Based Services.

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, December 11, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

DEPARTMENT OF STATE: Kentucky Registry of Election Finance: Electronic Voting Systems

032 KAR 001:030 & E. Election finance statement forms; campaign contributions or expenditures in excess of \$3,000. John Steffen, executive director, represented the registry.

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.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue:
General Administration

103 KAR 001:040. Waiver of penalties. Gary Morris, executive advisor, and Todd Renner, executive director, represented the department.

In response to a question by Co-Chair Harris, Mr. Morris and Mr. Renner stated that changes to these administrative regulations were for compliance with federal and state legislative updates.

103 KAR 001:130. Taxation of federal and certain nonfederal obligations.

Income Tax; Corporations

103 KAR 016:060. Income classification; apportionable and nonapportionable.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 8 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 016:090. Apportionment; payroll factor.

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

103 KAR 016:230. Intangible expenses, intangible interest expense, and management fees.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) establish a definition for “arm’s length transaction;” and (2) comply with

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

103 KAR 016:240. Nexus standard for corporations and pass-through entities.

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

103 KAR 016:290. Apportionment; property factor.

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

103 KAR 016:330. Apportionment and allocation; alternative apportionment; separate ac-counting.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to clarify that this administrative regulation shall apply to taxable years beginning on or after January 1, 2018. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:340. Completed contract method.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to establish a definition for "gross contract price." Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Miscellaneous

103 KAR 019:010. Computation of income; estates and trusts.

In response to a question by Co-Chair Harris, Mr. Renner stated that this administrative regulation had not been amended since 1975.

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

Kentucky Retirement Systems: General Rules

105 KAR 001:145. Voluntary cessation of participation by employers. Joseph Bowman, assistant general counsel, and Alan Hurst, staff attorney, represented the systems.

In response to questions by Co-Chair Harris, Mr. Hurst stated that the employer was responsible for paying fees associated with litigation, which was in accordance with the systems' broad statutory authority. Mr. Bowman stated that KRS 61.522, Section 9, provided that an employer that voluntarily ceased participation in the systems, or was required to voluntarily cease participation, shall hold the Commonwealth harmless from damages, attorneys' fees, and costs of legal claims for any cause of action brought.

In response to a question by Senator Raque Adams, Mr. Bowman stated that these requirements were not retroactive.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 8, 9, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:147 & E. Involuntary cessation of participating employers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Chiropractic Examiners

201 KAR 021:015. Code of ethical conduct and standards of practice. Keith Poynter, general counsel, represented the board.

201 KAR 021:045. Specialties.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to: (a) establish examples of specialties certified; and (b) reference the board's Web site,

where a complete listing of approved and certified specialties is maintained. Without objection, and with agreement of the agency, the amendments were approved.

Board of Examiners of Psychology

201 KAR 026:130. Grievances and administrative complaints. Tony Cotto, executive advisor, represented the board.

In response to questions by Co-Chair Harris, Mr. Cotto stated that this administrative regulation, in concert with 201 KAR 26:140, established disciplinary provisions with the intent to encourage use of the KRS Chapter 13B due process requirements. The grievance process was an intermediate step prior to commencing the formal complaint process.

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

201 KAR 026:140. Procedures for disciplinary hearings.

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

201 KAR 026:171. Requirements for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 15 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 026:175. Continuing education.

201 KAR 026:200. Education requirements.

201 KAR 026:211. Repeal of 201 KAR 026:210.

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

201 KAR 026:280. Licensed psychological associate: application procedures and temporary license.

In response to a question by Co-Chair Harris, Mr. Cotto stated that requirements pertaining to specific passing scores were deleted and replaced with the general concept of a passing score.

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

Board of Licensure of Occupational Therapy

201 KAR 028:021. Repeal of 201 KAR 028:020, 201 KAR 028:090, 201 KAR 028:110, 201 KAR 028:180, and 201 KAR 028:210. Jared Downs, counsel, and Stacy Grider, chair, represented the board.

201 KAR 028:060. Licensure, renewals, and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 1 through 3 to clarify examination requirements; and (3) to amend Section 8 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 028:170. Deep physical agent modalities.

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

301 KAR 002:095. Importation of cervid carcasses and parts. Gabe Jenkins, deer and elk coordinator; Evan Jones, assistant general counsel; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Co-Chair Hale regarding concerns from the Kentucky Taxidermist Association, Ms. Waldrop stated that this administrative regulation was necessary to protect Kentucky cervids from Chronic Wasting Disease, which was communicable and caused by an abnormal prion in certain cervid species. Chronic Wasting Disease was a neurological illness, which caused death in any infected cervid. This administrative regulation prohibited bringing into Kentucky from any other state, neurological tissue (brain and spinal cord) from any harvested cervid. Sixteen (16) states

had similar prohibitions. Waiting for a state to test positive as a Chronic Wasting Disease state before prohibiting the entrance of harvested cervid neurological tissue, because the testing takes time, could be insufficient for protecting Kentucky. Wildlife officers worked closely with taxidermists and processors to ensure that harvested cervid neurological tissue was not brought into Kentucky. Additionally, wildlife officers watched for harvested cervids brought in by vehicle. Indiana was the only state from which Kentucky authorized importation of live cervids.

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

301 KAR 002:132. Elk hunting seasons, permits, zones, and requirements.

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

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Permits, Registrations, and Prohibitory Rules

401 KAR 052:050. Permit application forms. Melissa Duff, director, represented the division.

In response to a question by Co-Chair Harris, Ms. Duff stated that these administrative regulations did not lessen the stringency of requirements in terms of source registration. The amendments clarified if a permit or a registration was required.

401 KAR 052:070. Registration of air contaminant sources.

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.

JUSTICE AND PUBLIC SAFETY CABINET: Special Local Peace Officers

500 KAR 003:020. Filing and processing SLPO commissions. Julie Foster, staff attorney, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Foster stated that special local peace officers were employed at facilities such as the Ark Encounter, churches, and synagogues.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, and 8 through 10 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 Planning:
Traffic

603 KAR 005:070. Motor vehicle dimension limits. Ann D'Angelo, assistant general counsel, and Steven Drake, engineering technician III, represented the division.

In response to a question by Co-Chair Harris, Ms. D'Angelo stated that the amendments to this administrative regulation were for compliance with federal updates.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "length exclusion safety device;" and (2) to amend Sections 2 through 4 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 CABINET: Board of
Education: Department of Education: Academic Standards

704 KAR 008:010. Kentucky Academic Standards for Computer Science Elective. Todd Allen, deputy general counsel; Christa Hall, director, Division of Program Standards; and Scott U'Sellis, academic program manager, represented the board.

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

704 KAR 008:030. Kentucky Academic Standards for Health.

704 KAR 008:050. Kentucky Academic Standards for Physical Education.

LABOR CABINET: Workers' Compensation Funding Commission: Collective
Bargaining and Arbitration

803 KAR 030:010. Special fund assessments. Estee Jackson, administrative services officer; Lisa King, director of auditing; and Olivia Orrender, audit review manager, represented the commission.

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 through 3, 5 through 7, and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control:
Licensing

804 KAR 004:011. Repeal of 804 KAR 004:010. Steve Humphress, general counsel, and Marc Manley, counsel, represented the department.

Mr. Humphress thanked Co-Chair Harris for his service and leadership during his tenure with the subcommittee.

ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources:
Division of Mine Safety: Mining Safety Standards

805 KAR 003:100. Equipment use and operation. Michael Mullins, regulation coordinator, and Jim Vicini, director, represented the division.

In response to a question by Co-Chair Harris, Mr. Vicini stated that the effective date for these requirements was being extended because these requirements were more stringent than the federal program and the industry was unable at this time to comply. The extension would give the division more time to work with stakeholders to develop feasibility.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Division of Administration and Financial Management: Local Health Departments

902 KAR 008:165. Local health department accounting and auditing requirements. Julie Brooks, regulation coordinator; Jenny Glass, branch manager; and Mike Tuggle, assistant director for administration and financial management, represented the division.

902 KAR 008:170. Local health department financial management requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 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.

Department for Medicaid Services: Division of Program Integrity: Medicaid Services

907 KAR 001:005. Nonduplication of payments. Jonathan Scott, regulatory advisor, represented the department.

907 KAR 001:075. Hearings and appeals for individuals with intellectual disability.

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

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 001:060. Federal Title IV-E adoption assistance. Laura Begin, regulation coordinator; Christa Bell, director; and Elizabeth Caywood, deputy commissioner, represented the division.

922 KAR 001:360 & E. Private child care placement, levels of care, and payment.

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, 2, 5, 9 through 13, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Staff read a resolution adjourning the subcommittee in honor of Co-Chair Harris upon his departure from the subcommittee. A motion was made and seconded to approve the resolution. Without objection, the resolution was approved.

Co-Chair Harris stated that serving on this subcommittee had given him the best education of any committee regarding the various functions of state government. His goal

had been to work with governmental agencies and stakeholders to develop administrative regulations that best served communities for the benefit of all Kentuckians. He thanked subcommittee members and staff.

The following administrative regulations were deferred or removed from the December 11, 2018, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:370. Pharmacy services in long-term care facility (LTCF).

Board of Social Work

201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Hazardous Waste

401 KAR 039:060. General requirements.

401 KAR 039:080. Hazardous waste handlers.

401 KAR 039:090. Hazardous waste permit program.

Enforcement and Compliance Monitoring

401 KAR 040:051. Repeal of 401 KAR 040:050.

Underground Storage Tanks

401 KAR 042:005. Definitions for 401 KAR Chapter 042.

401 KAR 042:020. UST system requirements, notification, registration, and annual fees.

401 KAR 042:060. UST system release and corrective action requirements.

401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

401 KAR 042:330. Small Owners Tank Removal Account.

401 KAR 042:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340.

JUSTICE AND PUBLIC SAFETY CABINET: Special Law Enforcement Officers

500 KAR 002:030. Special law enforcement officers: evaluation examination.

TRANSPORTATION CABINET: Department of Vehicle Regulation:
Administration

601 KAR 002:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of
Education: Department of Education: Office of Chief State School Officer

701 KAR 005:150. Nontraditional Instruction Program.

Office of Learning Programs Development: Office of Instruction

704 KAR 003:292. Education of migratory children.

704 KAR 003:303. Required academic standards.

704 KAR 003:305. Minimum requirements for high school graduation.

704 KAR 003:365. Complaint procedures for programs under the Elementary and
Secondary Education act of 1965.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of
Education: Department of Education: Academic Standards

704 KAR 008:020. Kentucky Academic Standards for Reading and Writing.

704 KAR 008:040. Kentucky Academic Standards for Mathematics.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 002:092. Disclosure of local government taxes and collection fee.

806 KAR 002:100. Disclosure of insurance premium surcharge.

806 KAR 002:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 005:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020.

Real Estate Authority: Board of Home Inspectors

815 KAR 006:001. Definitions for 815 KAR Chapter 6.

815 KAR 006:010. Licensing requirements.

815 KAR 006:030. Standards of conduct, complaints, and discipline.

815 KAR 006:040. Education requirements and providers.

815 KAR 006:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Long-term Care

900 KAR 002:021. Repeal of 900 KAR 002:020.

900 KAR 002:040. Citations and violations; criteria and specific acts.

Office of Inspector General: Division of Certificate of Need: Certificate of Need

900 KAR 006:075 & E. Certificate of need nonsubstantive review.

Department for Public Health: Food and Cosmetics

902 KAR 045:005. Kentucky food code.

902 KAR 045:007. Repeal of 902 KAR 045:006 and 902 KAR 045:140.

902 KAR 045:090. Home-based processors and farmers market home-based microprocessors.

Department for Medicaid Services: Division of Policy and Operations: Occupational, Physical, and Speech Therapy

907 KAR 008:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 001:010. Independent non-relative adoptions.

922 KAR 001:050. State funded adoption assistance.

922 KAR 001:100 & E. Public agency adoptions.

922 KAR 001:530. Post-adoption placement stabilization services.

The subcommittee adjourned at 2 p.m. The next meeting of the subcommittee is tentatively scheduled for January 9, 2019, at 10 a.m.