

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the April Meeting

April 13, 2021

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 13, 2021, 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 Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

Guests: Richard Dobson, Bethany Adkins Rice, Department of Revenue; Nicole Bease, Margaret Hazlette, Jay Miller, Board of Social Work; Joe Bilby, Jason Glass, Hannah Mann, Clint Quarles, Department of Agriculture; Melissa Duff, Division of Air Quality; Amy Barker, Brandon Lynch, Department of Corrections, Sam Flynn, Robin Maples, Chuck Stribling, Department of Workplace Standards; Abigail Gall, DJ Wasson, Department of Insurance; Laura Begin, Jason Dunn, Sarah Vanover, Department for Community Based Services.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

The Administrative Regulation Review Subcommittee met on Tuesday, April 13, 2021, and submits this report:

The following Emergency Administrative Regulation was reviewed pursuant to Senate Bill 2, Section 4, from the 2021 Regular Session of the General Assembly:

Cabinet for Health and Family Services: Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency. Laura Begin, regulation coordinator, and Dr. Sarah Vanover, director, Division of Childcare, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 4(3) to allow groups to be combined at opening and closing due to staffing limitations if the combining of groups was documented to allow for thorough contact tracing, if necessary. Without objection, and with agreement of the agency, the amendment was approved.

Administrative Regulations Reviewed by this Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue:
General Administration

103 KAR 1:160. Mandatory electronic filing and payment requirements. Richard Dobson, executive director, Sales and Excise Tax, and Bethany Rice, executive director, Office of Legal Services, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to change the effective date to October 1, 2021. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:100. Industrial laundry and linen supply services.

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.

BOARDS AND COMMISSIONS: Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration. Nicole Bearse, counsel; Margaret Hazlette, interim executive director; and Dr. Jay Miller, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 through 7 and 11 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add definitions for “board”, “charge”, “complaint committee”, “formal complaint”, “initiating complaint”, “order”, and “respondent”; (3) to add Section 2 pertaining to

Complaint Committee composition; and (4) to add Sections 8 through 10 establishing provisions pertaining to the formal response, composition of the hearing panel, and administrative disciplinary fine. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Regulation and Inspection; Motor Fuel

302 KAR 79:011. Motor fuel quality testing and inspection program. Jason Glass, director, Regulation and Inspection; Hannah Mann, administrative specialist III; and Clint Quarles, counsel, represented the department.

In response to a question by Co-Chair West, Mr. Quarles stated that 302 KAR 79:011 and 79:012 represented two (2) different pools of funding, resulting in the appearance of discrepancies in financial information between the two (2) administrative regulations. In fact, the data was correct.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 9(7) to clarify the department's requirement for licensee notification of analytical laboratory results. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 79:012. Motor fuel quality standards and specifications.

A motion was made and seconded to approve the following amendment: to amend Section 1(5)(d)2. to correct the ethanol percentage range. Without objection, and with agreement of the agency, the amendment was approved.

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

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills. Melissa Duff, director, represented the division.

In response to a question by Co-Chair West, Ms. Duff stated that this administrative regulation was not more stringent than federal requirements.

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

501 KAR 6:070. Kentucky Correctional Institution for Women. Amy Barker, assistant general counsel, and Brandon Lynch, program administrator, represented the department.

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.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:019. Receiving and unloading bulk hazardous liquids. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, federal – state coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Stribling stated that these administrative regulations were being amended to avoid sunset and the department believed that these administrative regulations complied with House Bill 475 from the 2021 Regular Session of the General Assembly.

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.

803 KAR 2:021. Identification, classification and regulation of potential occupational carcinogens.

803 KAR 2:050. Scope.

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

803 KAR 2:080. Advance notice of inspections.

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

803 KAR 2:090. Complaint inspections.

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

803 KAR 2:096. Repeal of 803 KAR 002:095 and 803 KAR 002:430.

803 KAR 2:100. Imminent danger.

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

803 KAR 2:115. Penalties.

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.

803 KAR 2:120. Citations.

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

803 KAR 2:240. Time for filing discrimination complaint.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:309. General environmental controls.

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.

803 KAR 2:314. Machinery and machine guarding.

A motion was made and seconded to approve the following amendments: to amend Section 1 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:320 & E. Toxic and hazardous substances.

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

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.

803 KAR 2:401. General interpretations.

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.

803 KAR 2:405. Fire protection and prevention.

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

803 KAR 2:408. Tools – hand and power.

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.

803 KAR 2:409. Welding and cutting.

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.

803 KAR 2:410. Electrical.

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.

803 KAR 2:413. Helicopters, hoists, elevators, and conveyers.

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.

803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

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.

803 KAR 2:415. Excavations.

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.

803 KAR 2:416. Concrete and masonry work.

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

803 KAR 2:417. Steel erection.

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.

803 KAR 2:420. Blasting and use of explosives.

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.

803 KAR 2:424. Diving.

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.

803 KAR 2:600. Occupational safety and health standards for agriculture.

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.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 2:060. Complaints. Abigail Gall, regulation coordinator, and DJ Wasson, deputy commissioner, 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 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.

Insurance Contract

806 KAR 14:005. Rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.

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

806 KAR 14:007. Rate and form filing for health insurers.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 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.

806 KAR 14:090. Grouping for preferential treatment prohibited.

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.

806 KAR 14:110. Dividend plans; filing, participation.

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

Life Insurance and Annuity Contracts

806 KAR 15:060. Universal life insurance.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY para-graphs and Sections 1, 4, 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 15:070. Annuity nonforfeiture.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 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.

Credit Life Insurance and Credit Health Insurance

806 KAR 19:050. Combined health and dismemberment restrictions.

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.

806 KAR 19:060. Joint lives.

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

Motor Vehicle Repairs (No fault)

806 KAR 39:050. Self-Insurance.

In response to a question by Co-Chair Hale, Ms. Wasson stated that self-insurance allowed for funds to be set aside on a regular basis to provide for a pool from which remuneration would be made, rather than associating with a traditional insurance company.

In response to a question by Co-Chair Hale, Ms. Wasson stated that self-insurance provisions were for corporations, not individuals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1, 2, 4 through 8, 11, 13, and 14; and 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.

Healthcare Malpractice

806 KAR 40:020. Charitable health care provider registration.

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 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:025 & E. Technical requirements. Laura Begin, regulation coordinator; Jason Dunn, director, Division of Family Support; and Dr. Sarah Vanover, director, Division of Child-care, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that the department's agency amendment reinstated the language to establish that a noncustodial parent with outstanding child support due, shall not be eligible to participate in SNAP. Exceptions were established, including if children under the age of eighteen (18) resided with the noncustodial parent and exceptions related to incarceration.

Co-Chairs West and Hale thanked the department for compromising with the subcommittee.

In response to questions by Co-Chair Hale, Ms. Begin stated that the department believed that Senate Bill 65 from the 2021 Regular Session of the General Assembly would have the effect of nullifying, effective June 2021, the department's 2020 amendment to this administrative regulation. This amendment was filed in January and would remain in place. This amendment complied with Senate Bill 65's prohibition against a substantially similar administrative regulation being filed because this amendment reinstated the SNAP prohibition for noncustodial parents with outstanding child support due.

Senator Yates thanked the department for proposing an amendment that would protect children residing with a noncustodial parent with outstanding child support due.

A motion was made and seconded to approve the following amendments to this emergency and ordinary administrative regulation: to amend Section 3 to insert language specifying that a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if delinquent in payment of court-ordered support, except

in certain circumstances, such as: (1) enrollment in a drug treatment program; (2) participation in an employment training pro-gram; (3) qualification under good cause for nonpayment; (4) having a child in the individual’s household who is under the age of eighteen (18); (5) having a person in the individual’s house-hold who is pregnant or three (3) months post-partum; and (6)(a) being within twelve (12) months of incarceration for a period of thirty (30) days or more; and (b) cooperating with the department of Income Support, Child Support Enforcement. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:035. Certification process.

The following amendments were approved by the subcommittee at the January 13, 2021 meeting: to amend Section 8 and material incorporated by reference to make technical corrections.

A motion was made and seconded to approve the following amendment: to amend Section 5(4) to reinsert the following language, previously designated for deletion: “, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11).” Without objection, and with agreement of the agency, the amendment was approved.

OTHER BUSINESS: Senator Yates made a motion, seconded by Senator Raque Adams, that Senator West be nominated for Senate Co-Chair. Senator West accepted the nomination. Senator Yates made a motion, seconded by Senator Raque Adams, to end Senate Co-Chair nominations. Senator West was endorsed by acclamation as Senate Co-Chair of the subcommittee.

Representative Frazier made a motion, seconded by Representative Marzian, that Representative Hale be nominated for House Co-Chair. Representative Hale accepted the nomination. Representative Bridges made a motion, seconded by Representative Marzian to end House Co-Chair nominations. Representative Hale was endorsed by acclamation as House Co-Chair of the subcommittee.

The following administrative regulations were deferred or removed from the April 13, 2021, subcommittee agenda:

GENERAL GOVERNMENT CABINET: Kentucky Infrastructure Authority

200 KAR 17:100. Guidelines for Broadband Deployment Account.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:380. Board authorized protocols.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:030. Fees.

201 KAR 32:035. Supervision of marriage and family therapy associates.

201 KAR 32:060. Continuing education requirements.

TRANSPORTATION CABINET: Department of Vehicle Regulation:
Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

PUBLIC PROTECTION CABINET: Department of Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule.

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for email notification of cancellation or removal of location of specific workers' compensation coverage.

Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:025. Licensing process.

Trade Practices and Frauds

806 KAR 12:120. Suitability in annuity transactions.

Insurance Contracts

806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.

Life Insurance and Annuity Contracts

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Inspector General: Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums.

900 KAR 6:055. Certificate of need forms.

900 KAR 6:060. Timetable for submission of certificate of need applications.

900 KAR 6:065. Certificate of need application process.

900 KAR 6:080. Certificate of need emergency circumstances.

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

900 KAR 6:095. Certificate of need administrative escalations.

900 KAR 6:100. Certificate of need standards for implementation and biennial review.

900 KAR 6:105. Certificate of need advisory opinions.

900 KAR 6:110. Certificate of need notification requirements.

900 KAR 6:115. Certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

Department for Public Health: Communicable Diseases

902 KAR 2:211E. Covering the face in response to declared national or state public health emergency.

Department for Public Health: Radon

902 KAR 95:040. Radon Contractor Registration Program.

Department for Community Based Services: Child Welfare

922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin.

The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee is tentatively scheduled for May 11, 2021, at 1 p.m.