

MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

Tuesday, June 13, 2023

2:00 P.M.

Room B, MAC Little Rock, Arkansas

Commission members and others present: Speaker Matthew Shepherd, Chair; Senator Clarke Tucker; Representative Joshua Bryant; Representative Jimmy Gazaway; Commissioner Camille Bennett; Commissioner Vaughan Hankins; Commissioner Theresa Beiner, Dean, University of Arkansas at Little Rock; Commissioner Ryan Owsley, Deputy Attorney General; Leslie Metheney, Lexis Nexis Law Publishing; Kevin Koon, Arkansas Code Revisor; Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research; Tawnie Rowell, Director, Arkansas Sentencing Commission; Booth Rand, General Counsel, Arkansas Insurance Department; Courtney Salas-Ford, Department of Education

Commissioner Shepherd called the meeting to order.

Minutes of the December 15, 2022, Meeting - Item B/Exhibit B

Senator Bryant moved to approve the Minutes and Representative Gazaway seconded the motion. The motion was adopted.

Consideration of authorization of expense reimbursement for official Commission duties by Commissioners pursuant to § 25-16-902 - Item C/Exhibit C

Speaker Shepherd reminded the commissioners that consideration of authorization of expense reimbursement for official Commission duties is an issue that has to be taken up at the first meeting of every year and he would entertain a motion.

Representative Gazaway moved to approve the authorization of expense reimbursement and Senator Bryant seconded the motion. The motion was adopted.

Discussion of Use of ACRC Work Product for Continuous Updating of Lexis Advance - Item D

Chair Shepherd recognized Mr. Miller to present the discussion. Mr. Miller asked Leslie Metheney from Lexis to join him to discuss the matter. Mr. Miller said that during the regular session the Bureau received comments that the Lexis Advance online product was being updated in real time with acts as they passed. This was causing some issues because the law was changing due to later acts and there were instances in which the updating was not correct. Staff also became aware that Lexis was using conformed acts to update the online Lexis Advance product. This issue has been resolved and Lexis will only update the online Lexis Advance product with their own work. Ms. Matheny was recognized and she said they started doing continuous updating around the 2015-2016 time period when they started receiving complaints from Arkansas law firms that Lexis was not keeping up with West. It is something that law firms desire and it is something Lexis has to do to remain competitive in the legal market, but Lexis does not have to use the conformed acts and will not use them in the future.

No action was taken on this item.

Discussion of Supply Chain Issues with Certain Printed Volumes of the Arkansas Code Set - Item E

Chair Shepherd recognized Leslie Metheny and she discussed two supply chain issues with materials used for the published volumes of the Arkansas Code. The first issue Ms. Metheny discussed was the cover of the Court Rules volume. Normally the cover is a Lexotone cover that has a leather-like texture to it. Lexis has managed this year to buy enough Lexotone covers, but there is a supply chain issue for the future. Paper mills have all been bought up and make less and less of what is needed. The substitute material is a coated paper cover that is recyclable and durable, but not as durable as Lexotone. Ms. Metheny requested that staff be entrusted with working with Lexis if a change in the material was needed. Chair Shepherd questioned if this material was the closest available material and if there was a price difference. Ms. Matheny answered that it was the material available in the industry, and that the cost was cheaper, but not enough to affect pricing.

Senator Tucker moved to authorize staff to make a decision or approve a change concerning the Lexotone material and for staff to alert the Commission if that occurs in the interim and Representative Gazaway seconded the motion. The motion was adopted.

The second issue discussed by Ms. Metheny concerned the cloth that goes over the Replacement Volumes. Lexis is hoping to have this material this December for replacement volumes. In the meantime Lexis has customers that want to order one-offs of a volume. Ms. Metheny brought two samples to pass around that were sent to her for possibilities. One would not work but the other was close to the existing color. Ms. Metheny requested that staff be given permission to deal with this issue for future replacement volumes and one-off volumes in conjunction with consulting with the commission.

Ms. Bennett moved to authorize staff to approve a change concerning the material for replacement volumes and one-off volumes and for staff to alert the Commission if that occurs and Senator Tucker seconded the motion. The motion was adopted.

Discussion of Issues Related to the Implementation of the Protect Arkansas Act Identified by the Arkansas Sentencing Commission - Item F/Exhibit F

Chair Shepherd recognized Mr. Miller. Mr. Miller asked that Tawnie Rowell, Director of the Arkansas Sentencing Commission, be recognized to speak on the changes that she requested to the act. Ms. Rowell explained that the Department Of Corrections is having any issues identified emailed to one central location and that the changes are pretty technical in nature. The first item was on Page 8 related to a seriousness grid. Ms. Rowell explained that the sentencing commission does not promulgate a seriousness grid – it promulgates a sentencing grid and a seriousness reference table. The second item was page 20 – the word “no” is missing. Following these two items there was discussion concerning the sentencing grid and seriousness grid and table. There was also discussion concerning whether on page 20 the word “no” should be inserted or deleted. Mr. Miller pointed out that ACRC was given additional authority under the Protect Arkansas Act to implement technical changes. The third item was on page 21 – changing Division of Correction to Department of Corrections or adding Division of Community Correction. There was discussion that Department of Corrections was the easiest fix. The fourth item was on page 24 – there are references to preliminary hearing and revocation hearing. Ms. Rowell presented a proposed revision to this language. There was discussion that the references and the subsection references were confusing and it was unclear which hearings were intended. The fifth item was on page 76 – 16-90-120(g) and the section itself needed effective date language. There was discussion of whether the effective date of the Protect Arkansas Act was sufficient.

Ms. Bennett moved to change “seriousness” to “sentencing” on page 20 and to change “Division of Correction” to “Department of Corrections” on page 21 in the Protect Arkansas Act and to hold over the remaining items until the next meeting and Mr. Hankins seconded the motion. The motion was adopted.

Discussion of Issues Related to Act Nos. 578 and 597 Concerning Ambulance Service Reimbursement Identified by the Arkansas Insurance Department – Item G/Exhibit G

Chair Shepherd recognized Mr. Miller who stated that the Arkansas Insurance Department brought this issue to staff, and Mr. Miller then introduced Booth Rand, General Counsel with the Arkansas Insurance Department. Mr. Rand stated that both Act 578 and 597 have different rates of reimbursement and the intent was for the first act to only apply to in-network activity, and the second act was to only apply to out-of-network activity. Mr. Rand pointed out the language in Act 597 that causes the issue “participating ground ambulance service provider” could be removed for the law to be clear on the reimbursement rates. He also stated that if the commission can’t make these changes the Insurance Department will interpret the issue this way. Mr. Rand talked to the insurance industry and to the ambulance lobbyist and he thinks we’re all in agreement as to this interpretation being consistent with what was intended. Mr. Miller stated staff was thinking of codifying both acts. There was discussion of codifying both acts, letting the Insurance Department handle the issue internally, and addressing the issue again with legislation in 2025. Speaker Shepherd stated that both acts would be codified for now and if the issue becomes heightened then to let staff know.

The Commission took no action on this item.

Conflicts and Issues in 2023 Acts - Item H/Exhibit H

Chair Shepherd recognized Mr. Miller who stated that the issues under this item are issues staff identified in the codification process. Mr. Miller introduced the new Code Revisor, Kevin Koon, and that Mr. Koon would introduce each item. Mr. Koon introduced item D1, concerning two acts amending the law on paper ballots. Mr. Miller stated that the law provided that we were to try and reconcile acts, but if they are irreconcilable, then the later act controls, and staff has deferred to the commission on the issue of reconcilability. Representative Long was recognized, primary House sponsor on both bills, and he stated his intent was to go with the second bill. There was discussion on the effect of determining the second act superseded the prior act and whether to hold this item over until the next meeting.

The Commission held over item D1 until the next meeting.

Mr. Koon introduced item D2, concerning two acts amending the law on poll watchers and the duplication of ballots. Chair Shepherd recognized Daniel Shults, Director of the State Board of Election Commissioners, and Michael Harry, general counsel for the Secretary of State. Mr. Shults offered a proposed reconciliation of the two acts and there was discussion on the proposed reconciliation and whether to hold this item over until the next meeting.

The Commission held over item D2 until the next meeting.

Mr. Koon introduced items A1-A8, concerning manifest reference errors. Mr. Miller explained that the commission has authority under § 1-2-303 to correct manifest reference errors.

Mr. Hankins moved to approve the recommended corrections to manifest reference errors identified in items A1-A8 and Ms. Bennett seconded the motion. The motion was adopted.

Mr. Koon introduced items B1-B12, concerning miscellaneous errors. There was discussion concerning item B3 and whether subdivision (b)(2) should be combined into the list in subdivision (b)(1) and whether to hold this item over until the next meeting. There was also discussion of item B4 involving a missing verb and the moving of subdivision (b)(6) and whether to hold this item over until the next meeting. Mr. Koon suggested that item B5 be skipped over because it was covered by the proposed corrections from the Arkansas Sentencing Commission under agenda item F. With respect to item B6, Mr. Miller stated that Senator Payton said the intent was to use the verb “may”. There was discussion of item B8 and Mr. Hankins suggested that this item be held over until the next meeting. There was discussion of item B9 and Chair Shepherd requested that this item be held over until the next meeting. There was discussion of item B10 and Chair Shepherd requested that this item be held over until

the next meeting. There was discussion of item B11 and the intent of both acts. Chair Shepherd requested that item B11 be held over until the next meeting. There was discussion of item B12 and Courtney Salas-Ford with the Department of Education was recognized to address the item. Chair Shepherd requested that item B12 be held over until the next meeting.

Senator Tucker moved to approve the recommendations for items B1, B2, B3 with respect to subdivision (b)(1), B6, and B7, and hold over items B3 with respect to subdivision (b)(2), B4, B8, B9, B10, B11, and B12 until the next commission meeting, and take no action on item B5, and Mr. Hankins seconded the motion. The motion was adopted.

Mr. Koon introduced items under C, concerning acts amending a provision of the Arkansas Code that another act repealed. Mr. Miller stated that the prior practice has been to consider a repealer as controlling over an amendment due to requirements in the Arkansas Constitution for revival and reenactment of language. After Mr. Koon introduced items C1-C4, Chair Shepherd recognized Representative Julie Mayberry to speak on item E2. Mr. Koon introduced the E items as involving a repeal and an amendment in which there didn't appear to be a direct conflict and then introduced item E2 concerning Act No. 237, which repeals the 3% cap on school choice transfers, and Act No. 129, which amends the cap provisions. Representative Mayberry as sponsor of Act No. 129 discussed her concerns with the effect of any decision by the Commission on Act No. 129. There was discussion concerning the codification and noting of Act No. 129. Chair Shepherd stated that the recommendation was to note Act No. 129. Following the discussion on item E2, Chair Shepherd requested that item D4 be introduced. Mr. Koon introduced item D4 as involving two acts amending teacher licensure that appeared to conflict. Courtney Salas-Ford with the Department of Education was recognized to speak on item D4. Ms. Salas-Ford stated that the recommendation of the Department of Education was to codify the later act as superseding the prior act and that the later act captured everything from the prior act. Following the discussion on item D4, Chair Shepherd requested that item D3 be introduced. Mr. Koon introduced item D3, concerning two acts that appeared to conflict in amending restricted driving permit provisions for probationers and parolees. There was discussion on how to capture the intent of both acts by using the earlier act and updating the officer reference to community supervision officer.

Senator Bryant moved to approve the recommendations for items D3 and D4 and hold over items D1 and D2 and Mr. Hankins seconded the motion. The motion was adopted.

Chair Shepherd requested that the Commission move back to the C items and Mr. Koon introduced items C5 – C9. There was discussion on the noting of item C5 and that was it was effective due to an emergency clause until the repealing act became effective.

Senator Tucker moved to approve the recommendations for items C1 – C9 and Mr. Hankins seconded the motion. The motion was adopted.

Mr. Koon resumed with the E items and introduced item E1. There was discussion concerning the codification of the subsection enacted by the amending act. Mr. Koon then introduced item E3.

Ms. Bennett moved to approve the recommendations for items E1 – E3 and Mr. Hankins seconded the motion. The motion was adopted.

Mr. Koon introduced the F items as items possibly needing legislative correction and item F1.

Speaker Shepherd requested that BLR staff notify the sponsors of legislation under item F1. No other action was taken.

Mr. Koon introduced the G items as items involving inaccurate references to state agencies and then introduced items G1 and G2.

Senator Tucker moved to approve the recommendations for items G1 and G2 and Senator Bryant seconded the motion. The motion was adopted.

Mr. Koon introduced the H items concerning conflicts between Commission technical correction acts and other acts. There was discussion that the Commission technical correction acts have a provision that makes another irreconcilable act control over the Commission technical correction act.

Mr. Hankins moved to approve the recommendations for items H1 – H4 and Senator Tucker seconded the motion. The motion was adopted.

Senator Tucker stated that he had communicated with Senator Davis concerning item B9 and that Senator Davis was good with the staff's suggestion.

Senator Tucker moved to approve the recommendation for item B9 and Ms. Bennett seconded the motion. The motion was adopted.

Discussion of Title 19 Recodification Workgroup and ACRC Representative – Item I/Exhibit I

Mr. Miller and Mr. Koon updated the Commission on responses to the workgroup proposal for the Title 19 recodification. Ms. Bennett volunteered to be the ACRC representative for the Title 19 workgroup.

Mr. Hankins moved to approve the appointment of Ms. Bennett to the Title 19 workgroup and Senator Tucker seconded the motion. The motion was adopted.

Report of Code Revisor – Item J

Mr. Koon reported to the Commission that staff has started receiving and working Supplements from Lexis and there will be a total of 57 volumes. Staff is scheduled to have those completed by the end of July. Mr. Miller requested that staff have the ability to switch replacement volume 3A with a replacement volume scheduled for 2024.

Without objection, Chair Shepherd approved the request to authorize staff to switch replacement volume 3A with a replacement volume scheduled for 2024.

Chair Shepherd, with no further business before the Commission, adjourned the meeting.