

1 AN ACT relating to judicial review of administrative decisions.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 13B.150 is amended to read as follows:

- 4 (1) Review of a final order shall be conducted by the court without a jury and shall be
5 confined to the record, unless there is fraud or misconduct involving a party
6 engaged in administration of this chapter. The court, upon request, may hear oral
7 argument and receive written briefs.
- 8 (2) The court shall not substitute its judgment for that of the agency as to the weight of
9 the evidence on questions of fact. The court may affirm the final order or it may
10 reverse the final order, in whole or in part, and remand the case for further
11 proceedings if it finds the agency's final order is:
- 12 (a) In violation of constitutional or statutory provisions;
 - 13 (b) In excess of the statutory authority of the agency;
 - 14 (c) Without support of substantial evidence on the whole record;
 - 15 (d) Arbitrary, capricious, or characterized by abuse of discretion;
 - 16 (e) Based on an ex parte communication which substantially prejudiced the rights
17 of any party and likely affected the outcome of the hearing;
 - 18 (f) Prejudiced by a failure of the person conducting a proceeding to be
19 disqualified pursuant to KRS 13B.040(2); or
 - 20 (g) Deficient as otherwise provided by law.
- 21 ***(3) The court shall decide all questions of law, including the interpretation of a***
22 ***constitutional or statutory provision or an administrative regulation adopted by***
23 ***an agency, without deference to any previous determination that may have been***
24 ***made on the question by the agency. Notwithstanding any other law, this***
25 ***subsection applies to any petition for judicial review of a final order, including***
26 ***review of final orders from administrative hearings exempt from this chapter***
27 ***pursuant to KRS 13B.020.***

1 ➔Section 2. KRS 13B.020 is amended to read as follows:

- 2 (1) The provisions of this chapter shall apply to all administrative hearings conducted
3 by an agency, with the exception of those specifically exempted under this section.
4 The provisions of this chapter shall supersede any other provisions of the Kentucky
5 Revised Statutes and administrative regulations, unless exempted under this section,
6 to the extent these other provisions are duplicative or in conflict. This chapter
7 creates only procedural rights and shall not be construed to confer upon any person
8 a right to hearing not expressly provided by law.
- 9 (2) *Except as provided in subsection (3) of Section 1 of this Act,* the provisions of this
10 chapter shall not apply to:
- 11 (a) Investigations, hearings to determine probable cause, or any other type of
12 information gathering or fact finding activities;
- 13 (b) Public hearings required in KRS Chapter 13A for the promulgation of
14 administrative regulations;
- 15 (c) Any other public hearing conducted by an administrative agency which is
16 nonadjudicatory in nature and the primary purpose of which is to seek public
17 input on public policy making;
- 18 (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter
19 35;
- 20 (e) Administrative hearings conducted by the legislative and judicial branches of
21 state government;
- 22 (f) Administrative hearings conducted by any city, county, urban-county, charter
23 county, or special district contained in KRS Chapters 65 to 109, or any other
24 unit of local government operating strictly in a local jurisdictional capacity;
- 25 (g) Informal hearings which are part of a multilevel hearing process that affords
26 an administrative hearing at some point in the hearing process if the
27 procedures for informal hearings are approved and promulgated in accordance

- 1 with subsections (4) and (5) of this section;
- 2 (h) Limited exemptions granted for specific hearing provisions and denoted by
- 3 reference in the text of the applicable statutes or administrative regulations;
- 4 (i) Administrative hearings exempted pursuant to subsection (3) of this section;
- 5 (j) Administrative hearings exempted, in whole or in part, pursuant to
- 6 subsections (4) and (5) of this section; and
- 7 (k) Any administrative hearing which was commenced but not completed prior to
- 8 July 15, 1996.

9 (3) Except as provided in subsection (3) of Section 1 of this Act, the following

10 administrative hearings are exempt from application of this chapter in compliance

11 with 1994 Ky. Acts ch. 382, sec. 19:

- 12 (a) Finance and Administration Cabinet
- 13 1. Higher Education Assistance Authority
- 14 a. Wage garnishment hearings conducted under authority of 20
- 15 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
- 16 b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A
- 17 and sec. 3716, and 34 C.F.R. sec. 30.33
- 18 2. Department of Revenue
- 19 a. Any licensing and bond revocation hearings conducted under the
- 20 authority of KRS 138.210 to 138.448 and 234.310 to 234.440
- 21 b. Any license revocation hearings under KRS 131.630 and 138.130
- 22 to 138.205
- 23 (b) Cabinet for Health and Family Services
- 24 1. Office of Health Policy
- 25 a. Certificate-of-need hearings and licensure conducted under
- 26 authority of KRS Chapter 216B
- 27 b. Licensure revocation hearings conducted under authority of KRS

- 1 Chapter 216B
- 2 2. Department for Community Based Services
- 3 a. Supervised placement revocation hearings conducted under
- 4 authority of KRS Chapter 630
- 5 3. Department for Income Support
- 6 a. Disability determination hearings conducted under authority of 20
- 7 C.F.R. sec. 404
- 8 4. Department for Medicaid Services
- 9 a. Administrative appeal hearings following an external independent
- 10 third-party review of a Medicaid managed care organization's final
- 11 decision that denies, in whole or in part, a health care service to an
- 12 enrollee or a claim for reimbursement to the provider for a health
- 13 care service rendered by the provider to an enrollee of the
- 14 Medicaid managed care organization, conducted under authority of
- 15 KRS 205.646
- 16 (c) Justice and Public Safety Cabinet
- 17 1. Department of Kentucky State Police
- 18 a. Kentucky State Police Trial Board disciplinary hearings conducted
- 19 under authority of KRS Chapter 16
- 20 2. Department of Corrections
- 21 a. Parole Board hearings conducted under authority of KRS Chapter
- 22 439
- 23 b. Prison adjustment committee hearings conducted under authority
- 24 of KRS Chapter 197
- 25 c. Prison grievance committee hearings conducted under authority of
- 26 KRS Chapters 196 and 197
- 27 3. Department of Juvenile Justice

- 1 a. Supervised placement revocation hearings conducted under KRS
2 Chapter 635
- 3 (d) Energy and Environment Cabinet
- 4 1. Department for Natural Resources
- 5 a. Surface mining hearings conducted under authority of KRS
6 Chapter 350
- 7 b. Oil and gas hearings conducted under the authority of KRS
8 Chapter 353, except for those conducted by the Kentucky Oil and
9 Gas Conservation Commission pursuant to KRS 353.500 to
10 353.720
- 11 c. Explosives and blasting hearings conducted under the authority of
12 KRS 351.315 to 351.375
- 13 2. Department for Environmental Protection
- 14 a. Wild River hearings conducted under authority of KRS Chapter
15 146
- 16 b. Water resources hearings conducted under authority of KRS
17 Chapter 151
- 18 c. Water plant operator and water well driller hearings conducted
19 under authority of KRS Chapter 223
- 20 d. Environmental protection hearings conducted under authority of
21 KRS Chapter 224
- 22 e. Petroleum Storage Tank Environmental Assurance Fund hearings
23 under authority of KRS Chapter 224
- 24 3. Public Service Commission
- 25 a. Utility hearings conducted under authority of KRS Chapters 74,
26 278, and 279
- 27 (e) Labor Cabinet

- 1 1. Department of Workers' Claims
- 2 a. Workers' compensation hearings conducted under authority of
- 3 KRS Chapter 342
- 4 2. Kentucky Occupational Safety and Health Review Commission
- 5 a. Occupational safety and health hearings conducted under authority
- 6 of KRS Chapter 338
- 7 (f) Public Protection Cabinet
- 8 1. Kentucky Claims Commission
- 9 a. Liability hearings conducted under authority of KRS 49.020(1) and
- 10 49.040 to 49.180
- 11 (g) Education and Workforce Development Cabinet
- 12 1. Unemployment Insurance hearings conducted under authority of KRS
- 13 Chapter 341
- 14 (h) Secretary of State
- 15 1. Registry of Election Finance
- 16 a. Campaign finance hearings conducted under authority of KRS
- 17 Chapter 121
- 18 (i) State universities and colleges
- 19 1. Student suspension and expulsion hearings conducted under authority of
- 20 KRS Chapter 164
- 21 2. University presidents and faculty removal hearings conducted under
- 22 authority of KRS Chapter 164
- 23 3. Campus residency hearings conducted under authority of KRS Chapter
- 24 164
- 25 4. Family Education Rights to Privacy Act hearings conducted under
- 26 authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
- 27 5. Federal Health Care Quality Improvement Act of 1986 hearings

1 conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS
2 Chapter 311.

3 (4) *Except as provided in subsection (3) of Section 1 of this Act,* any administrative
4 hearing, or portion thereof, may be certified as exempt by the Attorney General
5 based on the following criteria:

6 (a) The provisions of this chapter conflict with any provision of federal law or
7 regulation with which the agency must comply, or with any federal law or
8 regulation with which the agency must comply to permit the agency or
9 persons within the Commonwealth to receive federal tax benefits or federal
10 funds or other benefits;

11 (b) Conformity with the requirement of this chapter from which exemption is
12 sought would be so unreasonable or so impractical as to deny due process
13 because of undue delay in the conduct of administrative hearings; or

14 (c) The hearing procedures represent informal proceedings which are the
15 preliminary stages or the review stages of a multilevel hearing process, if the
16 provisions of this chapter or the provisions of a substantially equivalent
17 hearing procedure exempted under subsection (3) of this section are applied at
18 some level within the multilevel process.

19 (5) The Attorney General shall not exempt an agency from any requirement of this
20 chapter until the agency establishes alternative procedures by administrative
21 regulation which, insofar as practical, shall be consistent with the intent and purpose
22 of this chapter. When regulations for alternative procedures are submitted to the
23 Administrative Regulation Review Subcommittee, they shall be accompanied by the
24 request for exemption and the approval of exemption from the Attorney General.
25 The decision of the Attorney General, whether affirmative or negative, shall be
26 subject to judicial review in the Franklin Circuit Court within thirty (30) days of the
27 date of issuance. The court shall not overturn a decision of the Attorney General

- 1 unless the decision was arbitrary or capricious or contrary to law.
- 2 (6) Except to the extent precluded by another provision of law, a person may waive any
- 3 procedural right conferred upon that person by this chapter.
- 4 (7) The provisions of KRS 13B.030(2)(b) shall not apply to administrative hearings
- 5 held under KRS 11A.100 or 18A.095.