

CHAPTER 207**(HB 594)**

AN ACT relating to administrative regulations and declaring an emergency.

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

➔Section 1. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;
- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, and the amendment or repeal of an existing administrative regulation, but does not include:
 - (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;
 - (b) Declaratory rulings;
 - (c) Intradepartmental memoranda not in conflict with KRS 13A.130;
 - (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
 - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
- (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
- (5) "Commission" means the Legislative Research Commission;
- (6) "Effective" means an administrative regulation that has completed the legislative committee review established by KRS 13A.290, 13A.330, and 13A.331;
- (7) "Federal mandate" means any federal constitutional, legislative, or executive law or order that requires or permits any administrative body to engage in regulatory activities that impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
- (8) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
- (9) "Filed" or "promulgated" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
- (10) "Last effective date" means the latter of:
 - (a) The most recent date an ordinary administrative regulation became effective, without including the date a technical amendment was made pursuant to KRS 13A.040(10), 13A.2255(2), or 13A.312; or
 - (b) The date a certification letter was filed with the regulations compiler for that administrative regulation pursuant to KRS 13A.3104(4), if the letter stated that the administrative regulation shall remain in effect without amendment;

- (11) "Legislative committee" means an interim joint committee, a House or Senate standing committee, a statutory committee, or a subcommittee of the Legislative Research Commission;
- (12) "Local government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance;
- (13) **"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies;**
- (14) "Proposed administrative regulation" means an administrative regulation that:
- (a) Has been filed by an administrative body; and
 - (b) Has not become effective or been withdrawn;
- ~~(15)~~~~(14)~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
- ~~(16)~~~~(15)~~ "Small business" means a business entity, including its affiliates, that:
- (a) Is independently owned and operated; and
 - (b)
 1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or
 2. Has gross annual sales of less than six million dollars (\$6,000,000);
- ~~(17)~~~~(16)~~ "Statement of consideration" means the document required by KRS 13A.280 in which the administrative body summarizes the comments received, its responses to those comments, and the action taken, if any, as a result of those comments and responses;
- ~~(18)~~~~(17)~~ "Subcommittee" means the Administrative Regulation Review Subcommittee of the Legislative Research Commission;
- ~~(19)~~~~(18)~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; and
- ~~(20)~~~~(19)~~ "Written comments" means comments submitted to the administrative body's contact person identified pursuant to KRS 13A.220(6)(d) via hand delivery, United States mail, e-mail, or facsimile and may include but is not limited to comments submitted internally from within the promulgating administrative body or from another administrative body.
- ➔Section 2. KRS 13A.250 is amended to read as follows:
- (1) An administrative body that promulgates an administrative regulation shall consider the cost that the administrative regulation may cause state or local government **and regulated entities** to incur.
 - (2)
 - (a) **A two-part cost analysis shall be completed for each administrative regulation.**
 - (b) **The first part of the cost analysis shall include the projected cost or cost savings to the Commonwealth of Kentucky and each of its affected agencies, and the projected cost or cost savings to affected local governments, including cities, counties, fire departments, and school districts.**
 - (c) **The second part of the cost analysis shall include the projected cost or cost savings to the regulated entities affected by the administrative regulation.**
 - (d) Agencies **or entities** affected by the administrative regulation may submit comments in accordance with KRS 13A.270(1) to the promulgating administrative body or to a legislative committee reviewing the administrative regulation.
- ~~(3)~~~~(2)~~ Each administrative body that promulgates an administrative regulation shall prepare and submit with the administrative regulation a fiscal note. The fiscal note shall state:
- (a) The number of the administrative regulation;
 - (b) The name, e-mail address, and telephone number of the contact person of the administrative body identified pursuant to KRS 13A.220(6)(d), and, if applicable, the name, e-mail address, and telephone number of an alternate person to be contacted with specific questions about the fiscal note;
 - (c) **Each**~~The~~ unit, part, or division of state or local government the administrative regulation will affect;

- (d) In detail, the aspect or service of state or local government to which the administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation; ~~and~~
- (e) The estimated effect of the administrative regulation on the expenditures and revenues of a state or local government agency *or regulated entity* for the first full year the administrative regulation will be in effect. If specific dollar estimates cannot be determined, the administrative body shall provide a brief narrative to explain the fiscal impact of the administrative regulation; *and*
- (f) *The conclusion of the promulgating administrative body as to whether the administrative regulation will have a major economic impact, as defined in Section 1 of this Act, to state and local government and regulated entities.*

~~(4)(3)~~ Any administrative body may request the advice and assistance of the Commission in the preparation of the fiscal note.

➔ Section 3. KRS 13A.280 is amended to read as follows:

- (1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and all written comments received during the comment period, including:
 - (a) Any report filed by the Commission on Small Business Innovation and Advocacy in accordance with KRS 11.202(1)(e) and 13A.270(4), or by a local government in accordance with KRS 11.202(1)(e) and 13A.270(5); *and*
 - (b) *Any comments regarding the administrative regulation's major economic impact, as defined in Section 1 of this Act, as submitted by agencies, local governments, or regulated entities.*
- (2) (a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the commission on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period the statement of consideration relating to the administrative regulation and, if applicable, the amended after comments version.
 - (b) If the administrative body has received a significant number of public comments:
 - 1. It may extend the time for filing the statement of consideration for an ordinary administrative regulation and, if applicable, the amended after comments version by notifying the regulations compiler in writing on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period; and
 - 2. The administrative body shall file the statement of consideration for an ordinary administrative regulation and, if applicable, the amended after comments version, with the Commission on or before 12 noon, eastern time, no later than the fifteenth day of the second calendar month following the end of the public comment period.
- (3) (a) If the administrative regulation is amended as a result of the hearing or written comments received, the administrative body shall forward the items specified in this paragraph to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section:
 - 1. The original and five (5) copies of the administrative regulation indicating any amendments resulting from comments received at the public hearing and during the comment period. The amendments shall be indicated in:
 - a. The original wording for an ordinary administrative regulation; or
 - b. The wording of an emergency administrative regulation as amended, for an emergency administrative regulation that was amended at a legislative committee meeting pursuant to KRS 13A.190(3);
 - 2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and

3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
 - (b) The original and four (4) copies of the amended after comments version, the statement of consideration, and the attachments required by paragraph (a)3. of this subsection shall be stapled in the top left corner. The fifth copy shall not be stapled.
 - (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the amended after comments version, the statement of consideration, and the required attachments saved as a single document for each amended after comments administrative regulation in an electronic format approved by the regulations compiler.
- (4)
 - (a) If the administrative regulation is not amended as a result of the public hearing, or written comments received, the administrative body shall file the original and five (5) copies of the statement of consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section. The original and four (4) copies of the statement of consideration shall be stapled in the top left corner. The fifth copy of each statement of consideration shall not be stapled.
 - (b) If the statement of consideration covers multiple administrative regulations, as authorized by subsection (6)(g)1. of this section, the administrative body shall file with the regulations compiler:
 1. The original and five (5) copies of the statement of consideration as required by paragraph (a) of this subsection; and
 2. Two (2) additional unstapled copies of the statement of consideration for each additional administrative regulation included in the group of administrative regulations.
 - (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the statement of consideration saved as a single document for each statement of consideration in an electronic format approved by the regulations compiler.
- (5) If comments are received either at the public hearing or during the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee following the month in which the statement of consideration is due.
- (6) The format for the statement of consideration shall be as follows:
 - (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;
 - (b) The first page of the statement of consideration shall have a two (2) inch top margin;
 - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments," "Emergency Not Amended After Comments," "Amended After Comments," or "Emergency Amended After Comments," whichever is applicable;
 - (d) If a hearing has been held or written comments received, the heading is to be followed by:
 1. A statement setting out the date, time and place of the hearing, if the hearing was held;
 2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and
 3. The name and title of the representative of the promulgating administrative body;
 - (e) Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
 1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and

2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
- (f) Following the summary and comments, the promulgating administrative body shall:
 1. Summarize the statement and the action taken by the administrative body as a result of comments received at the public hearing and during the comment period; and
 2. If amended after the comment period, list the changes made to the administrative regulation in the format prescribed by KRS 13A.320(2)(c) and (d); and
- (g)
 1. If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
 2. Emergency administrative regulations shall be in a separate statement of consideration from ordinary administrative regulations.
- (7) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The changes made to the administrative regulation shall be typed in bold and made in the format prescribed by KRS 13A.222(2). The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (8) If requested, copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments or who specifically request a copy from the administrative body.

➔Section 4. KRS 13A.030 is amended to read as follows:

- (1) The Administrative Regulation Review Subcommittee shall:
 - (a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including, but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;
 - (b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon effective administrative regulations pursuant to subsections (2), (3), and (4) of this section or administrative regulations filed with the Commission;
 - (c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and
 - (d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.
- (2) The subcommittee may make a determination:
 - (a) That an effective administrative regulation or an administrative regulation filed with the Commission is deficient because it:
 1. Is wrongfully promulgated;
 2. Appears to be in conflict with an existing statute;
 3. Appears to have no statutory authority for its promulgation;
 4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;
 5. Fails to use tiering when tiering is applicable;
 6. Is in excess of the administrative body's authority;
 7. Appears to impose an unreasonable burden on government or small business, or both;

8. Is filed as an emergency administrative regulation without adequate justification of the emergency nature of the situation as described in KRS 13A.190(1);
 9. Has not been noticed in conformance with the requirements of KRS 13A.270(3);
 - 10. Does not provide an adequate cost analysis pursuant to Section 2 of this Act;** or
~~11.10.~~ Appears to be deficient in any other manner;
 - (b) That an administrative regulation is needed to implement an existing statute; or
 - (c) That an administrative regulation should be amended or repealed.
- (3) The subcommittee may review an effective administrative regulation if requested by a member of the subcommittee.
 - (4) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

➔Section 5. This Act shall be known and may be cited as the Kentucky REINS Act, or the Kentucky Regulations from the Executive in Need of Scrutiny Act.

➔Section 6. Whereas state governments, local governments, and private entities can experience incredible disruption with administrative regulations of substantial financial impacts, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Veto Overridden and Signed by Secretary of State April 14, 2022.