

1 AN ACT relating to executive branch ethics.

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

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

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

- 1 procedures for informal hearings are approved and promulgated in accordance
2 with subsections (4) and (5) of this section;
- 3 (h) Limited exemptions granted for specific hearing provisions and denoted by
4 reference in the text of the applicable statutes or administrative regulations;
- 5 (i) Administrative hearings exempted pursuant to subsection (3) of this section;
- 6 (j) Administrative hearings exempted, in whole or in part, pursuant to
7 subsections (4) and (5) of this section; and
- 8 (k) Any administrative hearing which was commenced but not completed prior to
9 July 15, 1996.
- 10 (3) The following administrative hearings are exempt from application of this chapter~~[~~
11 ~~in compliance 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 2. Department for Environmental Protection
- 8 a. Wild River hearings conducted under authority of KRS Chapter
9 146
- 10 b. Water resources hearings conducted under authority of KRS
11 Chapter 151
- 12 c. Water plant operator and water well driller hearings conducted
13 under authority of KRS Chapter 223
- 14 d. Environmental protection hearings conducted under authority of
15 KRS Chapter 224
- 16 e. Petroleum Storage Tank Environmental Assurance Fund hearings
17 under authority of KRS Chapter 224
- 18 3. Public Service Commission
- 19 a. Utility hearings conducted under authority of KRS Chapters 74,
20 278, and 279
- 21 (e) Labor Cabinet
- 22 1. Department of Workers' Claims
- 23 a. Workers' compensation hearings conducted under authority of
24 KRS Chapter 342
- 25 2. Kentucky Occupational Safety and Health Review Commission
- 26 a. Occupational safety and health hearings conducted under authority
27 of KRS Chapter 338

- 1 (f) Public Protection Cabinet
- 2 1. Kentucky Claims Commission
- 3 a. Liability hearings conducted under authority of KRS 49.020(1) and
- 4 49.040 to 49.180
- 5 (g) Education and Workforce Development Cabinet
- 6 1. Unemployment Insurance hearings conducted under authority of KRS
- 7 Chapter 341
- 8 (h) Secretary of State
- 9 1. Registry of Election Finance
- 10 a. Campaign finance hearings conducted under authority of KRS
- 11 Chapter 121
- 12 (i) State universities and colleges
- 13 1. Student suspension and expulsion hearings conducted under authority of
- 14 KRS Chapter 164
- 15 2. University presidents and faculty removal hearings conducted under
- 16 authority of KRS Chapter 164
- 17 3. Campus residency hearings conducted under authority of KRS Chapter
- 18 164
- 19 4. Family Education Rights to Privacy Act hearings conducted under
- 20 authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
- 21 5. Federal Health Care Quality Improvement Act of 1986 hearings
- 22 conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS
- 23 Chapter 311
- 24 **(j) Executive Branch Ethics Commission**
- 25 **1. Administrative hearings conducted under authority of KRS 11A.100.**
- 26 (4) Any administrative hearing, or portion thereof, may be certified as exempt by the
- 27 Attorney General based on the following criteria:

- 1 (a) The provisions of this chapter conflict with any provision of federal law or
2 regulation with which the agency must comply, or with any federal law or
3 regulation with which the agency must comply to permit the agency or
4 persons within the Commonwealth to receive federal tax benefits or federal
5 funds or other benefits;
- 6 (b) Conformity with the requirement of this chapter from which exemption is
7 sought would be so unreasonable or so impractical as to deny due process
8 because of undue delay in the conduct of administrative hearings; or
- 9 (c) The hearing procedures represent informal proceedings which are the
10 preliminary stages or the review stages of a multilevel hearing process, if the
11 provisions of this chapter or the provisions of a substantially equivalent
12 hearing procedure exempted under subsection (3) of this section are applied at
13 some level within the multilevel process.
- 14 (5) The Attorney General shall not exempt an agency from any requirement of this
15 chapter until the agency establishes alternative procedures by administrative
16 regulation which, insofar as practical, shall be consistent with the intent and purpose
17 of this chapter. When regulations for alternative procedures are submitted to the
18 Administrative Regulation Review Subcommittee, they shall be accompanied by the
19 request for exemption and the approval of exemption from the Attorney General.
20 The decision of the Attorney General, whether affirmative or negative, shall be
21 subject to judicial review in the Franklin Circuit Court within thirty (30) days of the
22 date of issuance. The court shall not overturn a decision of the Attorney General
23 unless the decision was arbitrary or capricious or contrary to law.
- 24 (6) Except to the extent precluded by another provision of law, a person may waive any
25 procedural right conferred upon that person by this chapter.
- 26 ➔Section 2. KRS 11A.100 is amended to read as follows:
- 27 (1) ~~The provisions of KRS Chapter 13B shall apply to all commission administrative~~

1 ~~hearings.~~

2 ~~(2)~~ All administrative hearings of the commission carried out pursuant to the provisions
3 of this section shall be public, unless the members vote to go into executive session
4 in accordance with KRS 61.810.

5 ~~(2)~~~~(3)~~ The commission, upon a finding pursuant to an administrative hearing that
6 there has been clear and convincing proof of a violation of this chapter, may:

7 (a) Issue an order requiring the violator to cease and desist the violation; and

8 (b) Issue an order requiring the violator to file any report, statement, or other
9 information as required by this chapter; and

10 (c) In writing, publicly reprimand the violator for potential violations of the law
11 and provide a copy of the reprimand to the alleged violator's appointing
12 authority, if any; and

13 (d) In writing, recommend to the violator's appointing authority that the violator
14 be removed or suspended from office or employment, and include a
15 recommendation for length of suspension, to be approved by the appointing
16 authority, if any; and

17 (e) Issue an order requiring the violator to pay a civil penalty of not more than
18 five thousand dollars (\$5,000) for each violation of this chapter.

19 ~~(3)~~~~(4)~~ In addition to any other remedies provided by law, any violation of this
20 chapter which has substantially influenced the action taken by any state agency in
21 any particular matter shall be grounds for voiding, rescinding, or canceling the
22 action on such terms as the interests of the state and innocent third persons require.

23 ~~(4)~~~~(5)~~ The commission shall refer to the Attorney General evidence of violations of
24 KRS 11A.040 for prosecution. The Attorney General shall have responsibility for
25 all prosecutions under the law and may request from the commission all evidence
26 collected in its investigation. The commission may represent itself through the
27 general counsel in all subsequent proceedings.