

**CHAPTER 165****(HB 609)**

AN ACT relating to administrative regulations.

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

Section 1. KRS 11.202 is amended to read as follows:

- (1) The duties of the Commission on Small Business Advocacy shall include, but not be limited to:
  - (a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;
  - (b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;
  - (c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector;~~{and}~~
  - (d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community; *and*
  - (e) ***Review administrative regulations that may impact small business. The commission may seek input from other agencies, organizations, or interested parties. In acting as an advocate for small business, the commission may submit a written report to the promulgating administrative body to be considered as comments received during the public comment period required by subsection (1)(c) of Section 5 of this Act. The report may specify the commission's findings regarding the administrative regulation, including an identification and estimate of the number of small businesses subject to the administrative regulation, the projected reporting, recordkeeping, and other administrative costs required for compliance with the administrative regulation, and any suggestions the commission has for reducing the regulatory burden on small businesses through the use of tiering or exemptions, in accordance with Section 4 of this Act. A copy of the report shall be filed with the regulations compiler of the Legislative Research Commission.***
- (2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:
  - (a) Activities and achievements of the commission in accomplishing its purposes and duties;
  - (b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
  - (c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

Section 2. 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, 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) "Economic impact" means a financial impact on:
  - (a) Commercial enterprises;
  - (b) Retail businesses;
  - (c) Service businesses;
  - (d) *Small businesses*;
  - (e) Industry;
  - (f) *Government*;
  - (g)~~(e)~~ Consumers of a product or service; or
  - (h)~~(f)~~ Taxpayers;
- (7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331;

- (8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
- (9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
- (10) "Filed" 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;
- (11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;
- (12) ***"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) "Proposed administrative regulation" means an administrative regulation that an administrative body proposes to promulgate;
- ~~(14)~~~~(13)~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
- ~~(15)~~~~(14)~~ ***"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).***
- (16) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;
- ~~(17)~~~~(15)~~ "Subcommittee" means the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, an interim joint committee, or a House and Senate standing committee; and
- ~~(18)~~~~(16)~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

Section 3. 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 administrative regulations submitted to it by 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 nonbinding determination:
- (a) That an administrative regulation 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;~~[-or]~~
    - 7. ***Appears to impose an unreasonable burden on government or small business, or both; or***
    - 8. 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 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 4. KRS 13A.210 is amended to read as follows:

- (1) When promulgating administrative regulations and reviewing existing ones, administrative bodies shall, whenever possible, tier their administrative regulations to reduce disproportionate impacts on certain classes of regulated entities, ***including government or small business, or both***, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The tiers, however, ~~shall~~~~must~~ be based upon reasonable criteria and uniformly applied to an entire class. Administrative bodies shall use any number of tiers that will solve most efficiently and effectively the problem the administrative regulation addresses. A written statement shall be submitted to the Legislative Research Commission explaining why tiering was or was not used.
- (2) Administrative bodies may use, but shall not be limited to, the following methods of tiering administrative regulations:
  - (a) Reduce or modify substantive regulatory requirements;
  - (b) Eliminate some requirements entirely;
  - (c) Simplify and reduce reporting and recordkeeping requirements;
  - (d) Provide exemptions from reporting and recordkeeping requirements;

- (e) Reduce the frequency of inspections;
  - (f) Provide exemptions from inspections and other compliance activities;
  - (g) Delay compliance timetables;
  - (h) Reduce,~~[-or]~~ modify, *or waive fines or other penalties*~~[fine schedules]~~ for noncompliance; and
  - (i) Address and alleviate special problems of individuals and small businesses in complying with an administrative regulation.
- (3) When tiering regulatory requirements, administrative bodies may use, but shall not be limited to, size and nonsize variables. Size variables include number of citizens, number of employees, level of operating revenues, level of assets, and market shares. Nonsize variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.
- (4) When modifying tiers, administrative bodies shall monitor, but shall not be limited to, the following variables:
- (a) Changing demographic characteristics;
  - (b) Changes in the composition of the work force;
  - (c) Changes in the inflation rate requiring revisions of dollar-denominated tiers;
  - (d) Changes in market concentration and segmentation;
  - (e) Advances in technology; and
  - (f) Changes in legislation.
- ~~[(5) When tiering administrative regulations for small business concerns, administrative bodies shall use the small business size standards as defined in Section 632 of the Federal Small Business Act and Part 121 of Title Thirteen of the Code of Federal Regulations.]~~

Section 5. KRS 13A.270 is amended to read as follows:

- (1) (a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (5) of this section, hold a hearing, open to the public, on the administrative regulation.
  - (b) The public hearing shall not be held before the twenty-first day or later than the last workday of the month in which the administrative regulation is published in the Administrative Register.
  - (c) The administrative body shall accept written comments regarding the administrative regulation for a period of thirty (30) days following the publication of the administrative regulation in the Administrative Register. If the thirtieth day of the comment period falls on a Saturday, Sunday, or holiday, the last day of the comment period shall be the workday following the Saturday, Sunday, or holiday.
- (2) Each administrative regulation shall state:
- (a) The place, time, and date of the scheduled public hearing;
  - (b) The manner in which interested persons shall submit their:

1. Notification of attending the public hearing; and
  2. Written comments;
- (c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;
- (d) The deadline for submitting written comments regarding the administrative regulation in accordance with paragraph (c) of subsection (1) of this section; and
- (e) The name, position, address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.
- (3) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified that the administrative body has filed an administrative regulation. This registration shall be valid for a period of four (4) years from the date the form is filed with the administrative body, or until the person submits a written request to be removed from the notification list, whichever occurs first.
- (b) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be mailed:
1. To every person who has filed this form with the administrative body;
  2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and
  3. With a cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.
- (4) (a) *If small business may be impacted by an administrative regulation, the administrative body shall e-mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the executive director of the Commission on Small Business Advocacy within one (1) working day after the date the administrative regulation is filed with the Commission.*
- (b) *The e-mail shall include a request from the administrative body that the Commission on Small Business Advocacy review the administrative regulation in accordance with subsection (1)(e) of Section 1 of this Act and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.*
- (5) (a) *If a government may be impacted by an administrative regulation, the administrative body shall send, by e-mail if the government has an e-mail address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each government in the state within one (1) working day after the date the administrative regulation is filed with the Commission. If the government does not have an e-mail address, the material shall not be sent.*
- (b) *The e-mail shall include a request from the administrative body that the government review the administrative regulation in the same manner as would the Commission on Small Business Advocacy under subsection (1)(e) of Section 1 of this Act, and submit its report or comments in accordance with the deadline established in*

***subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.***

- (6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.
- (7)~~(5)~~ The administrative body shall immediately notify the regulations compiler by telephone and by letter if:
- (a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and
  - (b) No written comments have been received by the close of the last day of the public comment period.
- (8)~~(6)~~ (a) Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by telephone and by letter that the public hearing shall be held.
- (b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by telephone and by letter that written comments have been received.
- (9)~~(7)~~ Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (6)~~(4)~~ of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.
- (10)~~(8)~~ Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

Section 6. 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 during the comment period, ***including any report filed by the Commission on Small Business Advocacy in accordance with subsection (1)(e) of Section 1 of this Act and subsection (4) of Section 5 of this Act, or by a government in accordance with subsection (1)(e) of Section 1 of this Act and subsection (5) of Section 5 of this Act.***
- (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 following the last day of the comment period the statement of consideration relating to the administrative regulation.
- (b) If the administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration for up to thirty (30) days by notifying the Commission in writing on or before 12 noon, eastern time, of the fifteenth day following the last day of the comment period. The administrative body

shall file the statement of consideration with the Commission on or before 12 noon, eastern time, no later than the forty-fifth day following the last day of the comment period.

- (3) (a) If the administrative regulation is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the items specified in paragraph (b) of this subsection to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section.
- (b)
  1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from comments received at the public hearing and during the comment period;
  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.
- (4) (a) If the administrative regulation is not amended as a result of the public hearing, or written or oral 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.
- (b) If the statement of consideration is not received by the regulations compiler at least fifteen (15) working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
- (5) 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" or "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;
    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);
  - (g) If the promulgating administrative body amends the administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and
  - (h) 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.
- (6) 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 administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

Section 7. This Act shall be known as the Small Business and Government Regulatory Fairness Act of 2004.

**Approved April 22, 2004**