

## CHAPTER 2

## ( HB 3 )

AN ACT relating to civil actions and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 452 IS CREATED TO READ AS FOLLOWS:

(1) *Except as provided in KRS 5.005, and notwithstanding any other statute to the contrary, the venue for any civil action that:*

(a) *Challenges the constitutionality of a Kentucky:*

1. *Statute;*
2. *Executive order;*
3. *Administrative regulation; or*
4. *Order of any cabinet, program cabinet, or department established under KRS Chapter 12;*

(b) *Includes a claim for declaratory judgment or injunctive relief; and*

(c) *Is brought individually, jointly, or severally against:*

1. *Any state official in his or her official capacity, including any public servant as defined in KRS 11A.010; or*
2. *Any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission;*

*shall be as provided in this section.*

(2) (a) *A plaintiff who is a resident of Kentucky shall file a complaint or petition in the office of the Circuit Court clerk in the county where the plaintiff resides. If more than one (1) plaintiff is a party to the action, the complaint or petition may be filed in any county where any plaintiff resides.*

(b) *A plaintiff who is not a resident of Kentucky shall file a complaint or petition in the Franklin Circuit Court.*

(3) *The plaintiff shall certify in the complaint or petition filed under this section that a copy of the complaint or petition has been served upon the Attorney General before or at the time of filing, and the Attorney General shall be entitled to be heard.*

(4) *In any appeal to the Kentucky Court of Appeals or Supreme Court, or the federal appellate courts in any forum that involves the constitutional validity of a statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department established under KRS Chapter 12, the Attorney General shall, before the filing of the appellant's brief, be served with a copy of the pleading, paper, or other document that initiates the appeal in the appellate forum. This notice shall specify the challenged statute, executive order, administrative regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12, and the nature of the alleged constitutional defect.*

(5) *The Attorney General shall notify the Legislative Research Commission of:*

(a) *The receipt of a complaint or petition and the nature of any proceedings involving the validity of any statute or regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12; and*

(b) *The entering of a final judgment in those proceedings, if the Attorney General is a party to the action.*

(6) *To protect the rights of the citizens of the Commonwealth of Kentucky as guaranteed by the Constitution of Kentucky, it is the intent of the General Assembly that any action brought or pursued under this section be given priority and prosecuted in an expeditious manner.*

- (7) *Pursuant to Sections 43 and 231 of the Constitution of Kentucky, members of the General Assembly, organizations within the legislative branch of state government, or officers or employees of the legislative branch shall not be made parties to any action challenging the constitutionality or validity of any statute or regulation, without the consent of the member, organization, or officer or employee.*
- (8) *Nothing in this section is intended to waive, nor shall it be interpreted or applied to waive or abrogate in any way, any legislative immunity or legislative privilege of any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission, as provided by the Constitution of Kentucky, KRS 418.075, any other statute of this Commonwealth, or federal or state common law.*

➔Section 2. KRS 13B.140 is amended to read as follows:

- (1) *Except as provided in Section 1 of this Act*, all final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.
- (2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.
- (3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.
- (4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
- An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
  - A stay is permitted by the agency and granted upon request; or
  - A stay is ordered by the Circuit Court of jurisdiction upon petition.

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

- (1) *Except as provided in Section 1 of this Act*, review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs. ***Challenges to the constitutionality of a final order shall be reviewed in accordance with Section 1 of this Act.***
- (2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
- In violation of constitutional or statutory provisions;
  - In excess of the statutory authority of the agency;
  - Without support of substantial evidence on the whole record;
  - Arbitrary, capricious, or characterized by abuse of discretion;
  - Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
  - Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or

(g) Deficient as otherwise provided by law.

→Section 4. Whereas protecting the constitutional rights of the citizens of Kentucky is of utmost importance, 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 February 2, 2021.**