

1 AN ACT relating to civil actions and declaring an emergency.

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

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

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

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

8 *1. Statute;*

9 *2. Executive order;*

10 *3. Administrative regulation; or*

11 *4. Order of any cabinet, program cabinet, or department established*
12 *under KRS Chapter 12;*

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

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

15 *1. Any state official in his or her official capacity, including any public*
16 *servant as defined in KRS 11A.010; or*

17 *2. Any body, subdivision, caucus, committee, or member of the General*
18 *Assembly, or the Legislative Research Commission;*

19 *shall be as provided in this section.*

20 *(2) (a) A plaintiff in an action described in subsection (1) of this section shall file a*
21 *complaint or petition in the office of the Circuit Court clerk in the county*
22 *where the plaintiff resides. If more than one (1) plaintiff is a party to the*
23 *action, the complaint or petition may be filed in any county where any*
24 *plaintiff resides. The plaintiff shall serve a copy of the complaint or petition*
25 *upon the Attorney General before or at the time of filing.*

26 *(b) Immediately upon the filing of the complaint or petition, the Circuit Court*
27 *clerk shall certify the action to the Chief Justice of the Kentucky Supreme*

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Court.

- (c) Within three (3) days of the certification, the Chief Justice shall randomly select one (1) Circuit Judge from each of the three (3) districts established in subsection (3) of this section to convene as a panel. No judge serving on the panel shall reside in the same judicial circuit or county as the plaintiff. The Chief Justice shall then select one (1) of the randomly selected judges to serve as chief judge of the panel. If, prior to a final decision, a member of the panel resigns, dies, or is unable to serve from any cause, the Chief Justice shall immediately select a replacement judge as provided in this paragraph.
- (d) The panel shall have sole authority over the case. If, prior to the selection of the panel, an order is issued by another Circuit Judge, the order shall have no precedential effect on the rulings of the panel.
- (e) The selected judges shall convene as a panel and shall have all the powers and responsibilities of a regular judge of the court. The chief judge may grant a temporary restraining order as provided by law. The order shall remain in force only until the full panel hears and determines any petition or motion for a preliminary injunction.
- (f) 1. The challenge shall be heard, and any hearing may be conducted virtually or in person at the discretion of the panel. Any orders shall be entered in the judicial circuit in which the complaint or petition was filed.
2. If subsequent challenges to the same statute, executive order, administrative regulation, or other order are filed in the same or any other Circuit Court while the initial action is pending, the challenges shall be consolidated and tried together by the panel selected under paragraph (c) of this subsection in the county where the initial action

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was filed.

(g) The panel shall decide the challenge by concurring vote of a majority of its judges. The decision shall be a final order and shall be subject to the same rights of appeal as in other civil actions.

(h) All proceedings at which a party or parties are allowed to be present before the panel, whether virtually or in person, shall be conducted in public and all records of the case shall be public and shall remain public, unless placed under seal by the panel if required by state or federal law. The proceedings shall also be accessible to the press for live video broadcast or recording.

(3) The counties comprising the districts from which Circuit Judges shall be selected for hearing challenges under this section shall be as follows:

(a) First District: Adair, Allen, Ballard, Barren, Boyle, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Wayne, and Webster;

(b) Second District: Anderson, Bourbon, Carroll, Fayette, Franklin, Henry, Jefferson, Jessamine, Oldham, Scott, Shelby, Trimble, and Woodford; and

(c) Third District: Bath, Bell, Boone, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Elliott, Estill, Fleming, Floyd, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Jackson, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Martin, Mason, McCreary, Menifee, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Whitley, and Wolfe.

1 (4) A judicial circuit that encompasses counties from more than one (1) district
2 established in subsection (3) of this section shall be eligible for inclusion in the
3 drawing pool of only one (1) district. After a judicial circuit is included in a
4 drawing pool for a district, that judicial circuit shall not be included in the
5 remaining drawing pools for that judge panel selection.

6 ➔Section 2. KRS 13A.337 is amended to read as follows:

7 (1) The General Assembly finds that certain administrative regulations, as evidenced by
8 the records of the Legislative Research Commission, including but not limited to
9 the Kentucky Administrative Regulations Service and the Administrative Register
10 of Kentucky, were found deficient on or after July 15, 1988, and either expired prior
11 to or upon adjournment of the 2001 General Assembly, or were scheduled to expire
12 upon adjournment of the 2002 Regular Session of the General Assembly, under the
13 provisions of KRS Chapter 13A as existing before the issuance of the Opinion and
14 Order of the Franklin Circuit Court in Patton v. Sherman et al., Civil Action No. 01-
15 CI-00660, entered January 11, 2002.

16 (2) Contrary provisions of any section of the Kentucky Revised Statutes
17 notwithstanding, the administrative regulations identified in subsection (1) of this
18 section shall be null, void, and unenforceable, as follows:

19 (a) Those administrative regulations identified in subsection (1) of this section
20 which expired prior to or upon adjournment of the 2001 Regular Session of
21 the General Assembly under the provisions of KRS Chapter 13A existing
22 before the issuance of the court order referenced in subsection (1) of this
23 section shall be null, void, and unenforceable as of their recorded date of
24 expiration, according to the records of the Legislative Research Commission.
25 Administrative bodies and regulated persons and entities have relied on the
26 assumption that these administrative regulations have previously expired;
27 therefore, this subsection shall have the retroactive effect necessary to

1 implement its provisions; and

2 (b) Those administrative regulations identified in subsection (1) of this section
3 due to expire upon adjournment of the 2002 Regular Session of the General
4 Assembly, under the provisions of KRS Chapter 13A existing before the
5 issuance of the court order referenced in subsection (1) of this section, shall be
6 null, void, and unenforceable on March 27, 2002.

7 (3) Contrary provisions of any section of the Kentucky Revised Statutes
8 notwithstanding, an administrative body shall be prohibited from promulgating an
9 administrative regulation that is identical to or substantially the same as any
10 administrative regulation identified in subsection (1) of this section for a period
11 beginning on January 11, 2002, and concluding upon adjournment of the 2003
12 Regular Session of the General Assembly. This subsection shall have the retroactive
13 effect necessary to implement its provisions.

14 (4) The Legislative Research Commission may file an action:

15 (a) In the Franklin Circuit Court for judicial review to determine if any
16 administrative regulation is lawfully promulgated in accordance with the laws
17 ~~[and Constitution]~~ of the Commonwealth of Kentucky; or

18 (b) Pursuant to Section 1 of this Act for judicial review to determine if any
19 administrative regulation is lawfully promulgated in accordance with the
20 Constitution of the Commonwealth of Kentucky.

21 ➔Section 3. KRS 13B.140 is amended to read as follows:

22 (1) Except as provided in Section 1 of this Act, all final orders of an agency shall be
23 subject to judicial review in accordance with the provisions of this chapter. A party
24 shall institute an appeal by filing a petition in the Circuit Court of venue, as
25 provided in the agency's enabling statutes, within thirty (30) days after the final
26 order of the agency is mailed or delivered by personal service. If venue for appeal is
27 not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or

1 the Circuit Court of the county in which the appealing party resides or operates a
2 place of business. Copies of the petition shall be served by the petitioner upon the
3 agency and all parties of record. The petition shall include the names and addresses
4 of all parties to the proceeding and the agency involved, and a statement of the
5 grounds on which the review is requested. The petition shall be accompanied by a
6 copy of the final order.

7 (2) A party may file a petition for judicial review only after the party has exhausted all
8 administrative remedies available within the agency whose action is being
9 challenged, and within any other agency authorized to exercise administrative
10 review.

11 (3) Within twenty (20) days after the service of the petition, or within further time
12 allowed by the court, the agency shall transmit to the reviewing court the original or
13 a certified copy of the official record of the proceeding under review. By stipulation
14 of all parties to the review proceedings, the record may be shortened. The court may
15 require or permit subsequent correction or additions to the official record. If the
16 court requests a transcript of proceedings that have not been transcribed, the cost of
17 the transcription shall be paid by the party initiating the appeal, unless otherwise
18 agreed to by all parties.

19 (4) A petition for judicial review shall not automatically stay a final order pending the
20 outcome of the review, unless:

21 (a) An automatic stay is provided by statute upon appeal or at any point in the
22 administrative proceedings;

23 (b) A stay is permitted by the agency and granted upon request; or

24 (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

25 ➔Section 4. KRS 13B.150 is amended to read as follows:

26 (1) **Except as provided in Section 1 of this Act,** review of a final order shall be
27 conducted by the court without a jury and shall be confined to the record, unless

1 there is fraud or misconduct involving a party engaged in administration of this
2 chapter. The court, upon request, may hear oral argument and receive written briefs.

3 **Challenges to the constitutionality of a final order shall be referred for**
4 **proceedings under Section 1 of this Act.**

5 (2) The court shall not substitute its judgment for that of the agency as to the weight of
6 the evidence on questions of fact. The court may affirm the final order or it may
7 reverse the final order, in whole or in part, and remand the case for further
8 proceedings if it finds the agency's final order is:

- 9 (a) In violation of constitutional or statutory provisions;
- 10 (b) In excess of the statutory authority of the agency;
- 11 (c) Without support of substantial evidence on the whole record;
- 12 (d) Arbitrary, capricious, or characterized by abuse of discretion;
- 13 (e) Based on an ex parte communication which substantially prejudiced the rights
14 of any party and likely affected the outcome of the hearing;
- 15 (f) Prejudiced by a failure of the person conducting a proceeding to be
16 disqualified pursuant to KRS 13B.040(2); or
- 17 (g) Deficient as otherwise provided by law.

18 ➔Section 5. Whereas uniformity is needed in protecting the constitutional rights
19 of the citizens of Kentucky, an emergency is declared to exist and this Act takes effect
20 upon its passage and approval by the Governor or upon its otherwise becoming a law.