

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
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Amend printed copy of **SB 65/HCS 1**

On page 1, between lines 3 and 4, insert the following:

"➔Section 1. KRS 13A.190 is amended to read as follows:

- (1) An emergency administrative regulation is an administrative regulation that:
 - (a) An administrative body can clearly demonstrate, through documentary evidence submitted with the filing of the emergency administrative regulation, must be placed into effect immediately in order to:
 - 1. Meet an imminent threat to public health, safety, welfare, or the environment;
 - 2. Prevent an imminent loss of federal or state funds;
 - 3. Meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law; or
 - 4. Comply with an executive order issued under KRS Chapter 39A; and
 - (b)
 - 1. Is temporary in nature and will expire as provided in this section; or
 - 2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section.

For the purposes of this section, "imminent" means within two hundred seventy (270) days of the filing of the emergency administrative regulation.

- (2) An agency's finding of an emergency pursuant to this section shall not be based on the agency's failure to timely process and file administrative regulations through the ordinary

Amendment No. HFA

Rep. Rep. David Hale

Committee Amendment

Signed: _____

Floor Amendment

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Not for Filing

administrative regulation process.

- (3) An emergency administrative regulation:
- (a) Shall become effective and shall be considered as adopted upon filing;
 - (b) Shall be published in the Administrative Register in accordance with the publication deadline established in KRS 13A.050(3);
 - (c) Shall be subject to the public comment provisions established in KRS 13A.270 and 13A.280;
 - (d)
 - 1. May be reviewed at a subsequent meeting of a legislative committee after the filing of the emergency administrative regulation; and
 - 2. May, by a vote of the majority of the legislative committee's membership as established by KRS 13A.020(4) and 13A.290(9), be found to be deficient, and the deficiency shall be reported to the Attorney General and the Governor pursuant to KRS 13A.330~~{(2)}~~; and
 - (e) May be amended:
 - 1. By the promulgating administrative body after receiving public comments as established in KRS 13A.280. The amended after comments version shall:
 - a. Become effective upon filing; and
 - b. Not require a statement of emergency; or
 - 2. At a legislative committee meeting as established in KRS 13A.320. The amendment shall be approved as established by KRS 13A.020(4) and KRS 13A.290(9). The amended version shall become effective upon adjournment of the meeting following the procedures established in KRS 13A.331.
- (4) (a) Except as provided by paragraph (b) of this subsection, emergency administrative regulations shall expire two hundred seventy (270) days after the date of filing or when the same matter filed as an ordinary administrative regulation filed for review is

- adopted, whichever occurs first.
- (b) If an administrative body extends the time for filing a statement of consideration for an ordinary administrative regulation as provided by KRS 13A.280(2)(b), an emergency administrative regulation shall remain in effect for two hundred seventy (270) days after the date of filing plus the number of days extended under the provisions of KRS 13A.280(2)(b) or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.
 - (c) Filing an emergency amended after comments administrative regulation shall not affect the expiration of an emergency regulation as established in paragraphs (a) and (b) of this subsection.
- (5) Except as established in subsection (6) of this section, an emergency administrative regulation with the same number or title or governing the same subject matter shall not be filed for a period of two hundred seventy (270) days after it has been initially filed.
- (6) If an emergency administrative regulation with the same number or title or governing the same subject matter as an emergency administrative regulation filed within the previous two hundred seventy (270) days is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency required by subsection (7) of this section.
- (7) Each emergency administrative regulation shall contain a statement of:
- (a) The nature of the emergency;
 - (b) The reasons why an ordinary administrative regulation is not sufficient;
 - (c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;
 - (d) If the emergency administrative regulation will be replaced by an ordinary

Unofficial Document

administrative regulation, the following statement: "The ordinary administrative regulation (is or is not) identical to this emergency administrative regulation.";

- (e) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and
 - (f) If applicable, the explanation required by subsection (6) of this section.
- (8) (a) An administrative body shall attach the:
- 1. Statement of emergency required by subsection (7) of this section to the front of the original and each copy of a proposed emergency administrative regulation;
 - 2. Public hearing and public comment period information required by KRS 13A.270(2), regulatory impact analysis, tiering statement, federal mandate comparison, fiscal note, summary of material incorporated by reference if applicable, and other forms or documents required by the provisions of this chapter to the back of the emergency administrative regulation; and
 - 3. Documentary evidence submitted justifying the finding of an emergency in accordance with subsection (1) of this section to the back of the emergency regulation if it is:
 - a. No more than four (4) pages in length; and
 - b. Typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-sided.

Larger volumes of documentary evidence shall be filed in a separate binder or on a CD-ROM or DVD disc.

- (b) An administrative body shall file with the regulations compiler:
 - 1. The original and five (5) copies of the emergency administrative regulation; and
 - 2. At the same time as, or prior to, filing the paper version, an electronic version of the emergency administrative regulation and the attachments required by

- paragraph (a) of this subsection saved as a single document for each emergency administrative regulation in an electronic format approved by the regulations compiler.
- (c) The original and four (4) copies of each emergency administrative regulation shall be stapled in the top left corner. The fifth copy of each emergency administrative regulation shall not be stapled. The original and the five (5) copies of each emergency administrative regulation shall be grouped together.
- (9) The statement of emergency shall have a two (2) inch top margin. The number of the emergency administrative regulation shall be typed directly below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."
- (10) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.
- (11) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that it will replace.
- (12) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn:
- (a) The emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn; and
- (b) The administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (13) (a) If an emergency administrative regulation that was intended to be replaced by an

ordinary administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.

- (b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.
 - (c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (14) The administrative regulations compiler shall notify all legislative committees of the number, title, and subject matter of all emergency administrative regulations and shall forward any additional information filed about the emergency administrative regulation requested by a legislative committee.

➔Section 2. KRS 13A.315 is amended to read as follows:

- (1) An administrative regulation shall expire and shall not be reviewed by a legislative committee if:
 - (a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;
 - (b) The statement of consideration and, if applicable, the amended after comments version are not filed on or before a deadline specified by this chapter;
 - (c) The administrative body has failed to comply with the provisions of this chapter governing the filing of administrative regulations, the public hearing and public comment period, or the statement of consideration; or
 - (d) The administrative regulation is deferred pursuant to KRS 13A.300(2) more than twelve (12) times.
- (2) (a) An administrative regulation that has been found deficient by a legislative committee

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shall be:

- 1. Automatically withdrawn in accordance with Section 3 of this Act; or**
 - 2. Withdrawn immediately if, pursuant to KRS 13A.330, the Governor has determined that it shall be withdrawn.**
- (b) The Governor shall notify the regulations compiler in writing and by telephone ~~if that~~ he or she has determined **under paragraph (a)2. of this subsection** that the administrative regulation found deficient shall be withdrawn.
- (c) The written withdrawal of an administrative regulation governed by **paragraph (a)2. [the provisions]** of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to KRS 13A.330, I have determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The administrative regulation, (administrative regulation number and title), is hereby withdrawn."
- (d) An administrative regulation governed by **paragraph (a)2. [the provisions]** of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.

➔Section 3. KRS 13A.330 is amended to read as follows:

- (1) **(a) For any filed administrative regulation that has been found deficient by a legislative committee under the provisions of this chapter:**
- 1. The administrative body may appeal within ten (10) days of the finding to the Attorney General. The administrative body shall provide written notice of the appeal to the regulations compiler; and**
 - 2. The Attorney General shall make a final determination within twenty (20) days of receipt of the appeal whether the finding shall be:**
 - a. Upheld, in which case the administrative regulation shall be**

Unofficial Document

automatically withdrawn and shall cease going through the administrative regulations process; or

b. Overruled, in which case the administrative regulation shall continue going through the administrative regulations process.

(b) The Attorney General shall transmit this determination to the Governor, the Commission, and the regulations compiler.

(c) The administrative regulation shall be automatically withdrawn and shall cease going through the administrative regulations process:

1. Upon receipt by the regulations compiler of the Attorney General's determination upholding the finding of deficiency; or

2. At the end of the ten (10) day appeal period if no notice of appeal was received by the regulations compiler.

(2) (a) If a filed ordinary administrative regulation has been found deficient, the legislative committee shall transmit to the Attorney General, the Governor, and the regulations compiler:

1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and

2. A request that the Governor determine, if the finding of deficiency is overruled by the Attorney General, whether the administrative regulation shall:

a. Be withdrawn;

b. Be amended at a legislative committee meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or

c. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.

(b) If the finding of deficiency is overruled by the Attorney General, the Governor shall

Unofficial Document

transmit his or her determination to the Commission and the regulations compiler.

(c) A filed ordinary administrative regulation that has been found deficient shall be considered as adopted and become effective after:

1. a. The review period established in this chapter has been completed;

b. The finding of deficiency is overruled by the Attorney General; and

~~c. [b.]~~ The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or

2. The legislative committee that found the filed administrative regulation deficient subsequently determines that it is not deficient ~~[in accordance with KRS 13A.335]~~, provided that this determination was made prior to:

a. The end of the ten (10) day appeal period if the finding was not appealed; or

b. Receipt by the regulations compiler of the Attorney General's or Governor's determination if the finding was appealed.

~~(3) [(2)]~~ (a) If an emergency administrative regulation has been found deficient, the legislative committee finding it deficient shall transmit to the **Attorney General, the Governor,** and the regulations compiler:

1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and

2. A request that the Governor determine, **if the finding of deficiency is overruled by the Attorney General,** whether the emergency administrative regulation shall:

a. Be withdrawn;

b. Be amended at a legislative committee meeting pursuant to KRS 13A.320

to conform to the finding of deficiency; or

c. Remain effective as established in KRS 13A.190(4) notwithstanding the finding of deficiency.

(b) **If the finding of deficiency is overruled by the Attorney General,** the Governor shall transmit his or her determination to the Commission and the regulations compiler.

(c) The legislative committee that found the emergency administrative regulation deficient may subsequently determine that it is not deficient **provided that this determination was made prior to:**

1. The end of the ten (10) day appeal period if the finding was not appealed; or

2. Receipt by the regulations compiler of the Attorney General's or Governor's determination if the finding was appealed~~[in accordance with KRS 13A.335].~~

~~(4)(3)~~ **For any effective ordinary administrative regulation that has been found deficient by a legislative committee under the provisions of this chapter:**

(a) The administrative body may appeal within ten (10) days of the finding to the Attorney General. The administrative body shall provide written notice of the appeal to the regulations compiler.

(b) The Attorney General shall make a final determination within twenty (20) days of receipt of the appeal whether the finding shall be:

1. Upheld, in which case the administrative regulation shall be null, void, and unenforceable; or

2. Overruled, in which case the administrative regulation shall remain in effect.

(c) The Attorney General shall transmit this determination to the Governor, the Commission, and the regulations compiler.

(d) The administrative regulation shall be null, void, and unenforceable:

1. Upon receipt by the regulations compiler of the Attorney General's

Unofficial Document

determination upholding the finding of deficiency; or

2. At the end of the ten (10) day appeal period if no notice of appeal was received by the regulations compiler.

(5) (a) If an effective ordinary administrative regulation has been found deficient by a legislative committee, the legislative committee shall transmit to the Attorney General, the Governor, and the regulations compiler:

1. A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and

2. A request that the Governor determine, if the finding of deficiency is overruled by the Attorney General, whether the administrative regulation shall:

a. Be repealed;

b. Be filed as an amended administrative regulation to conform to the finding of deficiency; or

c. Remain effective notwithstanding the finding of deficiency.

(b) If the finding of deficiency is overruled by the Attorney General, the Governor shall transmit this determination to the Commission and the regulations compiler.

(c) The legislative committee that found the administrative regulation deficient may subsequently determine that it is not deficient, provided that this determination was made prior to:

1. The end of the ten (10) day appeal period if the finding was not appealed; or

2. Receipt by the regulations compiler of the Attorney General's or Governor's determination if the finding was appealed.

(6) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, an administrative body shall not promulgate an administrative regulation that is identical

Unofficial Document

to, or substantially the same as, any administrative regulation whose deficiency finding was upheld by the Attorney General for at least one (1) year after the date the Attorney General upheld the deficiency finding.

➔Section 4. KRS 13A.335 is amended to read as follows:

- (1) (a) A filed administrative regulation found deficient by a legislative committee shall not be considered deficient if:
1. **The Attorney General overrules the deficiency finding; and**
 2. **a.** A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;
b.~~[2.]~~The legislative committee that found the administrative regulation deficient approves a motion that the subsequent amendment corrects the deficiency; and
c.~~[3.]~~Any legislative committee that reviews the administrative regulation under the provisions of KRS Chapter 13A finds that the administrative regulation is not deficient.
- (b) A filed administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not be considered deficient if:
1. **The Attorney General overrules the deficiency finding; and**
 2. **a.** The administrative regulation is amended to correct the deficiency at a meeting of the legislative committee to which it was assigned by the Commission;
b.~~[2.]~~That legislative committee does not determine that the administrative regulation is deficient for any other reason; and
c.~~[3.]~~The Administrative Regulation Review Subcommittee approves a motion that the deficiency has been corrected and that the administrative

Unofficial Document

regulation should not be considered deficient.

- (c) A filed administrative regulation found deficient by a legislative committee with subject matter jurisdiction shall not be considered deficient if:

1. The Attorney General overrules the deficiency finding; and

2. The legislative committee:

a. ~~[1.]~~ Reconsiders the administrative regulation and its finding of deficiency;
and

b. ~~[2.]~~ Approves a motion that the administrative regulation is not deficient.

- (d) If an amendment to an effective administrative regulation is going through the KRS Chapter 13A promulgation process and is found deficient by a legislative committee, the administrative regulation shall not be considered deficient if the:

1. Administrative regulation was found deficient due to the amendment;
2. Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and

3. **a.** Regulations compiler has not received the **Attorney General's determination, and if necessary, the** Governor's determination pursuant to KRS 13A.330 **if the finding was appealed; or**

b. Ten (10) day appeal period has not expired if the finding was not appealed.

- (2) ~~[If]~~ An effective administrative regulation ~~[is]~~ found deficient by a legislative committee ~~;~~ ~~the administrative regulation]~~ shall not be considered deficient if:

(a) The Attorney General overrules the deficiency finding; and

(b) The legislative committee:

1. ~~[(a)]~~ Reconsiders the administrative regulation and its finding of deficiency;
and

Unofficial Document

~~2.(b)~~ Approves a motion that the administrative regulation is not deficient.

- (3) (a) If an administrative regulation has been found deficient by a legislative committee **and the Attorney General overrules the finding**, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation was found deficient by the [name of legislative committee] on [date]." This notice shall be the last section of the administrative regulation.
- (b) If an administrative regulation has been found deficient by a legislative committee **and the Attorney General overrules the finding**, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (a) of this subsection.
- (c) If an administrative regulation that has been found deficient by a legislative committee has subsequently been determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (a) of this subsection.

➔Section 5. KRS 13A.336 is amended to read as follows:

- (1) (a) After the last regularly scheduled meeting of the Administrative Regulation Review Subcommittee in a calendar year, but by the thirty-first day of December of that calendar year, the staff of the Administrative Regulation Review Subcommittee shall submit a report to the co-chairs of that subcommittee regarding administrative regulations that were found deficient by any legislative committee of the Commission during that calendar year.
- (b) The report in paragraph (a) of this subsection shall contain:
1. Effective administrative regulations that were found deficient; and
 2. Administrative regulations filed with the Commission that were found deficient.
- (2) The report shall not contain any administrative regulation that was found deficient and:

Unofficial Document

- (a) Has been withdrawn; or
 - (b) Is no longer considered deficient under KRS 13A.335.
- (3) The report shall contain at least the following information for each administrative regulation in the report:
- (a) Administrative regulation number and title;
 - (b) Name of the promulgating agency;
 - (c) Date of deficiency determination;
 - (d) Name of the legislative committee that made the deficiency determination;
 - (e) Effective date, if it is in effect;
 - (f) The finding of deficiency and any other findings, recommendations, or comments sent to the Attorney General and the Governor;
 - (g) The Attorney General's decision to either uphold or overrule the finding of deficiency; and**
- (h)**~~(g)~~ If applicable under KRS 13A.330, the Governor's determination regarding the deficiency, if received by the Commission.
- (4) The first page of the report required by subsection (1) of this section shall contain the following text, in fourteen (14) point font or larger:
- "To ratify the deficiency findings listed in this report, a co-chair or other legislator may request that Legislative Research Commission staff prepare a bill:
- (a) Declaring that one (1) or more administrative regulations listed in the report shall be void; or
 - (b) Amending the relevant subject matter statutes in conformity with the findings of deficiency."
- ➔Section 6. KRS 15.020 is amended to read as follows:
- (1) The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of

its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his or her written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment.

- (2) The Attorney General shall communicate with the Legislative Research Commission as required by KRS 418.075.
- (3) Except as otherwise provided in KRS 48.005 and 2000 Ky. Acts ch. 483, sec. 8, the Attorney General shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter an appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of the office by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his, her, or its official duties, except where it is made the duty of the Commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment.
- (4) Notwithstanding any other statute or provision to the contrary, the Attorney General may:
 - (a) Bring any action challenging the constitutionality of a Kentucky statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department under KRS Chapter 12. The action may be brought in any county where the alleged constitutional harm has occurred or could be reasonably presumed to occur; *and*

Unofficial Document

(b) Review an administrative regulation under Section 3 of this Act to address a legislative committee's finding of deficiency relating to that administrative regulation.

- (5) If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under KRS 48.005."; and
- Renumber subsequent sections accordingly.