

1 AN ACT relating to governmental accountability 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 13B IS CREATED TO
4 READ AS FOLLOWS:

5 ***Any person who has had a permit, certificate, license, or benefit denied, suspended, or***
6 ***revoked due to noncompliance with any executive order or administrative regulation,***
7 ***or to any enforcement action stemming from, COVID-19 restrictions or limitations,***
8 ***social distancing, facemask covering, or related matters, shall be entitled to immediate***
9 ***reinstatement of that permit, certificate, license, or benefit. Any person so aggrieved***
10 ***shall be entitled to bring an action in the Circuit Court where they reside or the***
11 ***Franklin Circuit Court for relief.***

12 ➔Section 2. KRS 13A.190 is amended to read as follows:

13 (1) An emergency administrative regulation is an administrative regulation that:

14 (a) An administrative body can clearly demonstrate, through documentary
15 evidence submitted with the filing of the emergency administrative regulation,
16 must be placed into effect immediately in order to:

- 17 1. Meet an imminent threat to public health, safety, welfare, or the
18 environment;
- 19 2. Prevent an imminent loss of federal or state funds;
- 20 3. Meet an imminent deadline for the promulgation of an administrative
21 regulation that is established by state statute or federal law; or
- 22 4. Comply with an executive order issued under KRS Chapter 39A; and

- 23 (b) 1. Is temporary in nature and will expire as provided in this section; or
24 2. Is temporary in nature and will be replaced by an ordinary
25 administrative regulation as provided in this section.

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

- 1 (2) An agency's finding of an emergency pursuant to this section shall not be based on
2 the agency's failure to timely process and file administrative regulations through the
3 ordinary administrative regulation process.
- 4 (3) An emergency administrative regulation:
- 5 (a) Shall become effective and shall be considered as adopted upon filing;
- 6 (b) Shall be published in the Administrative Register in accordance with the
7 publication deadline established in KRS 13A.050(3);
- 8 (c) Shall be subject to the public comment provisions established in KRS
9 13A.270 and 13A.280;
- 10 (d) 1. May be reviewed at a subsequent meeting of a legislative committee
11 after the filing of the emergency administrative regulation; and
- 12 2. May, by a vote of the majority of the legislative committee's
13 membership as established by KRS 13A.020(4) and 13A.290(9), be
14 found to be deficient, and the deficiency shall be reported to the
15 Governor and the Attorney General pursuant to KRS 13A.330(2); and
- 16 (e) May be amended:
- 17 1. By the promulgating administrative body after receiving public
18 comments as established in KRS 13A.280. The amended after
19 comments version shall:
- 20 a. Become effective upon filing; and
- 21 b. Not require a statement of emergency; or
- 22 2. At a legislative committee meeting as established in KRS 13A.320. The
23 amendment shall be approved as established by KRS 13A.020(4) and
24 KRS 13A.290(9). The amended version shall become effective upon
25 adjournment of the meeting following the procedures established in
26 KRS 13A.331.
- 27 (4) (a) Except as provided by paragraph (b) of this subsection, emergency

1 administrative regulations shall expire two hundred seventy (270) days after
2 the date of filing or when the same matter filed as an ordinary administrative
3 regulation filed for review is adopted, whichever occurs first.

4 (b) If an administrative body extends the time for filing a statement of
5 consideration for an ordinary administrative regulation as provided by KRS
6 13A.280(2)(b), an emergency administrative regulation shall remain in effect
7 for two hundred seventy (270) days after the date of filing plus the number of
8 days extended under the provisions of KRS 13A.280(2)(b) or when the same
9 matter filed as an ordinary administrative regulation filed for review is
10 adopted, whichever occurs first.

11 (c) Filing an emergency amended after comments administrative regulation shall
12 not affect the expiration of an emergency regulation as established in
13 paragraphs (a) and (b) of this subsection.

14 (5) Except as established in subsection (6) of this section, an emergency administrative
15 regulation with the same number or title or governing the same subject matter shall
16 not be filed for a period of two hundred seventy (270) days after it has been initially
17 filed.

18 (6) If an emergency administrative regulation with the same number or title or
19 governing the same subject matter as an emergency administrative regulation filed
20 within the previous two hundred seventy (270) days is filed, it shall contain a
21 detailed explanation of the manner in which it differs from the previously filed
22 emergency administrative regulation. The detailed explanation shall be included in
23 the statement of emergency required by subsection (7) of this section.

24 (7) Each emergency administrative regulation shall contain a statement of:

25 (a) The nature of the emergency;

26 (b) The reasons why an ordinary administrative regulation is not sufficient;

27 (c) Whether or not the emergency administrative regulation will be replaced by

1 an ordinary administrative regulation;

2 (d) If the emergency administrative regulation will be replaced by an ordinary
3 administrative regulation, the following statement: "The ordinary
4 administrative regulation (is or is not) identical to this emergency
5 administrative regulation.";

6 (e) If the emergency administrative regulation will not be replaced by an ordinary
7 administrative regulation, the reasons therefor; and

8 (f) If applicable, the explanation required by subsection (6) of this section.

9 (8) (a) An administrative body shall attach the:

10 1. Statement of emergency required by subsection (7) of this section to the
11 front of the original and each copy of a proposed emergency
12 administrative regulation;

13 2. Public hearing and public comment period information required by KRS
14 13A.270(2), regulatory impact analysis, tiering statement, federal
15 mandate comparison, fiscal note, summary of material incorporated by
16 reference if applicable, and other forms or documents required by the
17 provisions of this chapter to the back of the emergency administrative
18 regulation; and

19 3. Documentary evidence submitted justifying the finding of an emergency
20 in accordance with subsection (1) of this section to the back of the
21 emergency regulation if it is:

22 a. No more than four (4) pages in length; and

23 b. Typewritten on white paper, size eight and one-half (8-1/2) by
24 eleven (11) inches, and single-sided.

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

27 (b) An administrative body shall file with the regulations compiler:

- 1 1. The original and five (5) copies of the emergency administrative
2 regulation; and
- 3 2. At the same time as, or prior to, filing the paper version, an electronic
4 version of the emergency administrative regulation and the attachments
5 required by paragraph (a) of this subsection saved as a single document
6 for each emergency administrative regulation in an electronic format
7 approved by the regulations compiler.
- 8 (c) The original and four (4) copies of each emergency administrative
9 regulation shall be stapled in the top left corner. The fifth copy of each
10 emergency administrative regulation shall not be stapled. The original
11 and the five (5) copies of each emergency administrative regulation shall
12 be grouped together.
- 13 (9) The statement of emergency shall have a two (2) inch top margin. The number of
14 the emergency administrative regulation shall be typed directly below the heading
15 "Statement of Emergency." The number of the emergency administrative regulation
16 shall be the same number as the ordinary administrative regulation followed by an
17 "E."
- 18 (10) Each executive department emergency administrative regulation shall be signed by
19 the head of the administrative body and countersigned by the Governor ***and the***
20 *Attorney General* prior to filing with the Commission. These signatures shall be on
21 the statement of emergency attached to the front of the emergency administrative
22 regulation.
- 23 (11) If an emergency administrative regulation will be replaced by an ordinary
24 administrative regulation, the ordinary administrative regulation shall be filed at the
25 same time as the emergency administrative regulation that it will replace.
- 26 (12) If an ordinary administrative regulation that was filed to replace an emergency
27 administrative regulation is withdrawn:

- 1 (a) The emergency administrative regulation shall expire on the date the ordinary
2 administrative regulation is withdrawn; and
- 3 (b) The administrative body shall inform the regulations compiler of the reasons
4 for withdrawal in writing.
- 5 (13) (a) If an emergency administrative regulation that was intended to be replaced by
6 an ordinary administrative regulation is withdrawn, the emergency
7 administrative regulation shall expire on the date it is withdrawn.
- 8 (b) If an emergency administrative regulation has been withdrawn, the ordinary
9 administrative regulation that was filed with it shall not expire unless the
10 administrative body informs the regulations compiler that the ordinary
11 administrative regulation is also withdrawn.
- 12 (c) If an emergency administrative regulation is withdrawn, the administrative
13 body shall inform the regulations compiler of the reasons for withdrawal in
14 writing.
- 15 (14) The administrative regulations compiler shall notify all legislative committees of
16 the number, title, and subject matter of all emergency administrative regulations
17 and shall forward any additional information filed about the emergency
18 administrative regulation requested by a legislative committee.
- 19 ➔Section 3. KRS 13A.310 is amended to read as follows:
- 20 (1) Except as provided in KRS 13A.3102 and 13A.3104, an ordinary administrative
21 regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired
22 that it no longer be effective.
- 23 (2) Except as provided in KRS 13A.3102 and 13A.3104, an ordinary administrative
24 regulation, once adopted, cannot be suspended but shall be repealed if it is desired
25 to suspend its effect.
- 26 (3) (a) An ordinary administrative regulation shall be repealed only by the
27 promulgation of an administrative regulation that:

1 administrative body at any time prior to its adoption.

2 (b) An ordinary administrative regulation that has been found deficient may be
3 withdrawn by the promulgating administrative body, ~~or by~~ the Governor, or
4 *the Attorney General* at any time prior to its adoption.

5 (c) Once an ordinary administrative regulation is withdrawn, it shall not be
6 reinstated, except by repromulgation as a totally new matter.

7 (5) (a) An emergency administrative regulation may be withdrawn by the
8 promulgating administrative body at any time prior to its expiration.

9 (b) An emergency administrative regulation that has been found deficient may be
10 withdrawn by the promulgating administrative body, ~~or by~~ the Governor, or
11 *the Attorney General* at any time prior to its expiration.

12 (6) If an administrative regulation is withdrawn, the administrative body, ~~or~~ the
13 Governor, or the Attorney General shall inform the regulations compiler of the
14 reasons for withdrawal in writing.

15 ➔Section 4. KRS 13A.315 is amended to read as follows:

16 (1) An administrative regulation shall expire and shall not be reviewed by a legislative
17 committee if:

18 (a) It has not been reviewed or approved by the official or administrative body
19 with authority to review or approve;

20 (b) The statement of consideration and, if applicable, the amended after
21 comments version are not filed on or before a deadline specified by this
22 chapter;

23 (c) The administrative body has failed to comply with the provisions of this
24 chapter governing the filing of administrative regulations, the public hearing
25 and public comment period, or the statement of consideration; or

26 (d) The administrative regulation is deferred pursuant to KRS 13A.300(2) more
27 than twelve (12) times.

- 1 (2) (a) An administrative regulation that has been found deficient by a legislative
 2 committee shall be withdrawn immediately if, pursuant to KRS 13A.330, the
 3 Governor or the Attorney General has determined that it shall be withdrawn.
- 4 (b) The Governor or the Attorney General shall notify the regulations compiler
 5 in writing and by telephone that he or she has determined that the
 6 administrative regulation found deficient shall be withdrawn.
- 7 (c) The written withdrawal of an administrative regulation governed by the
 8 provisions of this subsection shall be made in a letter to the regulations
 9 compiler in the following format: "Pursuant to KRS 13A.330, I have
 10 determined that (administrative regulation number and title) shall be
 11 (withdrawn, or withdrawn and amended to conform to the finding of
 12 deficiency, as applicable). The administrative regulation, (administrative
 13 regulation number and title), is hereby withdrawn."
- 14 (d) An administrative regulation governed by the provisions of this subsection
 15 shall be considered withdrawn upon receipt by the regulations compiler of the
 16 written withdrawal.

17 ➔Section 5. KRS 13A.330 is amended to read as follows:

- 18 (1) (a) If a filed ordinary administrative regulation has been found deficient, the
 19 legislative committee shall transmit to the Governor, the Attorney General,
 20 and the regulations compiler:
- 21 1. A copy of the finding of deficiency and other relevant findings,
 22 recommendations, or comments; and
 - 23 2. A request that the Governor and the Attorney General determine
 24 whether the administrative regulation shall:
 - 25 a. Be withdrawn;
 - 26 b. Be amended at a legislative committee meeting pursuant to KRS
 27 13A.320 to conform to the finding of deficiency; or

- 1 c. Become effective pursuant to the provisions of this section
2 notwithstanding the finding of deficiency.
- 3 (b) The Governor and the Attorney General shall transmit his or her
4 determination to the Commission and the regulations compiler. If the
5 Governor and the Attorney General cannot concur in their determination,
6 the administrative regulation shall be withdrawn.
- 7 (c) A filed ordinary administrative regulation that has been found deficient shall
8 be considered as adopted and become effective after:
- 9 1. a. The review period established in this chapter has been completed;
10 and
11 b. The regulations compiler has received the Governor's and the
12 Attorney General's determination that the administrative
13 regulation shall become effective pursuant to the provisions of this
14 section notwithstanding the finding of deficiency; or
- 15 2. The legislative committee that found the filed administrative regulation
16 deficient subsequently determines that it is not deficient in accordance
17 with KRS 13A.335, provided that this determination was made prior to
18 receipt by the regulations compiler of the Governor's and the Attorney
19 General's determination.
- 20 (2) (a) If an emergency administrative regulation has been found deficient, the
21 legislative committee finding it deficient shall transmit to the Governor, the
22 Attorney General, and the regulations compiler:
- 23 1. A copy of the finding of deficiency and other relevant findings,
24 recommendations, or comments; and
- 25 2. A request that the Governor and the Attorney General determine
26 whether the emergency administrative regulation shall:
27 a. Be withdrawn;

- 1 b. Be amended at a legislative committee meeting pursuant to KRS
2 13A.320 to conform to the finding of deficiency; or
- 3 c. Remain effective as established in KRS 13A.190(4)
4 notwithstanding the finding of deficiency.
- 5 (b) The Governor and the Attorney General shall transmit his or her
6 determination to the Commission and the regulations compiler.
- 7 (c) The legislative committee that found the emergency administrative regulation
8 deficient may subsequently determine that it is not deficient in accordance
9 with KRS 13A.335.
- 10 (3) If an effective ordinary administrative regulation has been found deficient by a
11 legislative committee, the legislative committee shall transmit to the Governor and
12 the Attorney General a copy of its finding of deficiency and other findings,
13 recommendations, or comments it deems appropriate.
- 14 ➔Section 6. KRS 13A.335 is amended to read as follows:
- 15 (1) (a) A filed administrative regulation found deficient by a legislative committee
16 shall not be considered deficient if:
- 17 1. A subsequent amendment of that administrative regulation is filed with
18 the Commission by the administrative body;
- 19 2. The legislative committee that found the administrative regulation
20 deficient approves a motion that the subsequent amendment corrects the
21 deficiency; and
- 22 3. Any legislative committee that reviews the administrative regulation
23 under the provisions of KRS Chapter 13A finds that the administrative
24 regulation is not deficient.
- 25 (b) A filed administrative regulation found deficient by the Administrative
26 Regulation Review Subcommittee shall not be considered deficient if:
- 27 1. The administrative regulation is amended to correct the deficiency at a

- 1 meeting of the legislative committee to which it was assigned by the
2 Commission;
- 3 2. That legislative committee does not determine that the administrative
4 regulation is deficient for any other reason; and
- 5 3. The Administrative Regulation Review Subcommittee approves a
6 motion that the deficiency has been corrected and that the administrative
7 regulation should not be considered deficient.
- 8 (c) A filed administrative regulation found deficient by a legislative committee
9 with subject matter jurisdiction shall not be considered deficient if the
10 legislative committee:
- 11 1. Reconsiders the administrative regulation and its finding of deficiency;
12 and
- 13 2. Approves a motion that the administrative regulation is not deficient.
- 14 (d) If an amendment to an effective administrative regulation is going through the
15 KRS Chapter 13A promulgation process and is found deficient by a
16 legislative committee, the administrative regulation shall not be considered
17 deficient if the:
- 18 1. Administrative regulation was found deficient due to the amendment;
19 2. Promulgating administrative body has withdrawn the proposed
20 amendment of the existing administrative regulation; and
- 21 3. Regulations compiler has not received the Governor's or the Attorney
22 General's determination pursuant to KRS 13A.330.
- 23 (2) If an effective administrative regulation is found deficient by a legislative
24 committee, the administrative regulation shall not be considered deficient if the
25 legislative committee:
- 26 (a) Reconsiders the administrative regulation and its finding of deficiency; and
27 (b) Approves a motion that the administrative regulation is not deficient.

1 (3) (a) If an administrative regulation has been found deficient by a legislative
2 committee, the regulations compiler shall add the following notice to the
3 administrative regulation: "This administrative regulation was found deficient
4 by the [name of legislative committee] on [date]." This notice shall be the last
5 section of the administrative regulation.

6 (b) If an administrative regulation has been found deficient by a legislative
7 committee, subsequent amendments of that administrative regulation filed
8 with the Commission shall contain the notice provided in paragraph (a) of this
9 subsection.

10 (c) If an administrative regulation that has been found deficient by a legislative
11 committee has subsequently been determined not to be deficient under the
12 provisions of this section, the regulations compiler shall delete the notice
13 required by paragraph (a) of this subsection.

14 ➔Section 7. KRS 13A.336 is amended to read as follows:

15 (1) (a) After the last regularly scheduled meeting of the Administrative Regulation
16 Review Subcommittee in a calendar year, but by the thirty-first day of
17 December of that calendar year, the staff of the Administrative Regulation
18 Review Subcommittee shall submit a report to the co-chairs of that
19 subcommittee regarding administrative regulations that were found deficient
20 by any legislative committee of the Commission during that calendar year.

21 (b) The report in paragraph (a) of this subsection shall contain:

- 22 1. Effective administrative regulations that were found deficient; and
23 2. Administrative regulations filed with the Commission that were found
24 deficient.

25 (2) The report shall not contain any administrative regulation that was found deficient
26 and:

27 (a) Has been withdrawn; or

- 1 (b) Is no longer considered deficient under KRS 13A.335.
- 2 (3) The report shall contain at least the following information for each administrative
3 regulation in the report:
- 4 (a) Administrative regulation number and title;
- 5 (b) Name of the promulgating agency;
- 6 (c) Date of deficiency determination;
- 7 (d) Name of the legislative committee that made the deficiency determination;
- 8 (e) Effective date, if it is in effect;
- 9 (f) The finding of deficiency and any other findings, recommendations, or
10 comments sent to the Governor and the Attorney General; and
- 11 (g) If applicable under KRS 13A.330, the Governor's and Attorney General's
12 determination regarding the deficiency, if received by the Commission.
- 13 (4) The first page of the report required by subsection (1) of this section shall contain
14 the following text, in fourteen (14) point font or larger:
- 15 "To ratify the deficiency findings listed in this report, a co-chair or other legislator
16 may request that Legislative Research Commission staff prepare a bill:
- 17 (a) Declaring that one (1) or more administrative regulations listed in the report
18 shall be void; or
- 19 (b) Amending the relevant subject matter statutes in conformity with the findings
20 of deficiency."
- 21 ➔Section 8. KRS 13B.120 is amended to read as follows:
- 22 (1) In making the final order, the agency head shall consider the record including the
23 recommended order and any exceptions duly filed to a recommended order.
- 24 (2) The agency head may accept the recommended order of the hearing officer and
25 adopt it as the agency's final order, or it may reject or modify, in whole or in part,
26 the recommended order, or it may remand the matter, in whole or in part, to the
27 hearing officer for further proceedings as appropriate. **If the agency head rejects or**

1 modifies, in whole or part, the recommended order, and the agency head's action
2 increases a penalty, sustains violations not found by the hearing officer, imposes
3 additional conditions on any permit, certificate, license, or benefit, or denies,
4 revokes, or suspends a permit, certificate, license, or benefit, in a manner more
5 adverse to the applicant, licensee, or permittee than that recommended by the
6 hearing officer, the agency head shall transmit his or her action to the Attorney
7 General for review, who may accept, reject, or modify the agency head's action.

8 (3) The final order in an administrative hearing shall be in writing and stated in the
9 record. If the final order differs from the recommended order, it shall include
10 separate statements of findings of fact and conclusions of law. The final order shall
11 also include the effective date of the order and a statement advising parties fully of
12 available appeal rights.

13 (4) Except as otherwise required by federal law, the agency head shall render a final
14 order in an administrative hearing within ninety (90) days after:

15 (a) The receipt of the official record of the hearing in which there was no hearing
16 officer submitting a recommended order under KRS 13B.110; or

17 (b) The hearing officer submits a recommended order to the agency head, unless
18 the matter is remanded to the hearing officer for further proceedings.

19 (5) Unless waived by the party, a copy of the final order shall be transmitted to each
20 party or to his attorney of record in the same manner as provided in KRS 13B.050.

21 (6) This section shall not apply to disposition pursuant to KRS 13B.070(3).

22 (7) If, pursuant to statute, an agency may review the final order of another agency, the
23 review is deemed to be a continuous proceeding as if before a single agency. The
24 final order of the first agency is treated as a recommended order and the second
25 agency functions as though it were reviewing a recommended order in accordance
26 with this section.

27 ➔Section 9. KRS 13B.150 is amended to read as follows:

- 1 (1) Except as provided in KRS 452.005, review of a final order shall be conducted by
2 the court without a jury and shall be confined to the record, unless there is fraud or
3 misconduct involving a party engaged in administration of this chapter. **For**
4 **purposes of this section, misconduct shall include violating appropriation**
5 **restrictions placed upon the agency by the General Assembly.** The court, upon
6 request, may hear oral argument and receive written briefs. Challenges to the
7 constitutionality of a final order shall be reviewed in accordance with KRS 452.005.
- 8 (2) The court shall not substitute its judgment for that of the agency as to the weight of
9 the evidence on questions of fact. The court may affirm the final order or it may
10 reverse the final order, in whole or in part, and remand the case for further
11 proceedings if it finds the agency's final order is:
- 12 (a) In violation of constitutional or statutory provisions;
 - 13 (b) In excess of the statutory authority of the agency;
 - 14 (c) Without support of substantial evidence on the whole record;
 - 15 (d) Arbitrary, capricious, or characterized by abuse of discretion;
 - 16 (e) Based on an ex parte communication which substantially prejudiced the rights
17 of any party and likely affected the outcome of the hearing;
 - 18 (f) Prejudiced by a failure of the person conducting a proceeding to be
19 disqualified pursuant to KRS 13B.040(2); or
 - 20 (g) Deficient as otherwise provided by law.
- 21 **(3) Notwithstanding any other provision of law, and in the event of allegations of**
22 **appropriation restriction violations by an aggrieved party, the court conducting**
23 **the judicial review shall determine, in addition to whether there was such a**
24 **violation, whether the violation is willful and intentional. Evidence that the**
25 **agency head was aware of the restriction and failed to comply with that**
26 **restriction is sufficient evidence of willful intent. If the court determines that a**
27 **violation was willful, it shall order the head of the agency taking the action and**

1 *any administrative official participating in the appropriation restriction violation*
2 *removed from office, and that person shall be prohibited from holding any other*
3 *office of trust or profit within the Commonwealth for a period of ten (10) years*
4 *following that finding.*

5 ➔Section 10. Sections 1, 5, and 6 of this Act apply retroactively to any
6 administrative matter that is pending or on appeal in any court on the effective date of
7 this Act.

8 ➔Section 11. Whereas immediate governmental accountability is of paramount
9 importance to the citizens of the Commonwealth, an emergency is declared to exist, and
10 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
11 becoming a law.