

1           AN ACT relating to administrative hearings.

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

3           ➔Section 1. KRS 13B.090 is amended to read as follows:

4    (1) In an administrative hearing, findings of fact shall be based exclusively on the  
5       evidence on the record. The hearing officer shall exclude evidence that is irrelevant,  
6       immaterial, unduly repetitious, or excludable on constitutional or statutory grounds  
7       or on the basis of evidentiary privilege recognized in the courts of this  
8       Commonwealth. Hearsay evidence may be admissible[,] if it is the type of evidence  
9       that reasonable and prudent persons would rely on in their daily affairs, but it shall  
10      not be sufficient in itself to support an agency's findings of facts unless it would be  
11      admissible over objections in civil actions.

12   (2) All testimony shall be made under oath or affirmation. Any part of the evidence  
13      may be received in written form if doing so will expedite the hearing without  
14      substantial prejudice to the interests of any party. The hearing officer may make a  
15      recommended order in an administrative hearing submitted in written form if the  
16      hearing officer determines there are no genuine issues of material fact in dispute  
17      and judgment is appropriate as a matter of law.

18   (3) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a  
19      list of all witnesses every other party expects to call at the hearing[,] and the  
20      available documentary or tangible evidence relating to an administrative hearing  
21      either in person or by counsel. Copies of documentary evidence may be obtained  
22      upon the payment of a fee, except documents protected from disclosure by state or  
23      federal law. ~~Nothing in~~ This section shall not be construed as giving a party the  
24      right to examine or copy the personal notes, observations, or conclusions of the  
25      agency staff, unless exculpatory in nature, nor ~~shall it~~ be construed as allowing  
26      access to the work product of counsel for the agency. Conditions for examining and  
27      copying agency records, fees to be charged, and other matters pertaining to access

1 to these records shall be governed by KRS 61.870 to 61.884. To the extent required  
2 by due process, the hearing officer may order the inspection of any records  
3 excluded from the application of KRS 61.870 to 61.884 under KRS 61.878 that  
4 relate to an act, transaction, or event that is a subject of the hearing, and may order  
5 their inclusion in the record under seal.

6 (4) Objections to evidentiary offers may be made by any party and shall be noted in the  
7 record.

8 (5) The hearing officer may take official notice of facts which are not in dispute, or of  
9 generally-recognized technical or scientific facts within the agency's specialized  
10 knowledge. The hearing officer shall notify all parties, either before or during the  
11 hearing, or in preliminary reports or otherwise, of any facts~~s~~ noticed and their  
12 source. All parties shall be given an opportunity to contest facts officially noticed.

13 (6) The agency shall cause all testimony, motions, and objections in a hearing to be  
14 accurately and completely recorded. At the discretion of the agency, any person,  
15 upon request, may receive a copy of the recording or a copy of the transcript, if the  
16 hearing has been transcribed~~, at the discretion of the agency~~, unless the hearing is  
17 closed by law. The agency may prepare a transcript of a hearing or a portion of a  
18 hearing upon request but the party making the request shall be responsible for the  
19 transcription costs. The form of all requests and fees charged shall be consistent  
20 with KRS 61.870 to 61.884.

21 (7) In all administrative hearings, unless otherwise provided by statute or federal law,  
22 the:  
23 (a) Party proposing the agency take action or grant a benefit has the burden to  
24 show the propriety of the agency action or entitlement to the benefit sought:~~;~~  
25 ~~The~~  
26 (b) Agency has the burden to show the propriety of a penalty imposed or the  
27 removal of a benefit previously granted:~~;~~~~The~~

(c) Party asserting an affirmative defense has the burden to establish that defense; and[. The]

(d) Party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings shall be[is] met by clear and convincing[a preponderance of] evidence in the record, except when a higher standard of proof is required by law.[Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.]

(8) Any party that prevails against any agency in an action initiated by an agency shall be awarded costs and reasonable attorney's fees.

➔ Section 2. KRS 151.184 is amended to read as follows:

12 (1) All hearings under this chapter shall be held before a qualified hearing officer, who  
13 may be a full-time employee of the cabinet, serve by contract, or be paid on a per  
14 diem basis at the discretion of the cabinet. After the conclusion of the hearing, the  
15 hearing officer shall within thirty (30) days make a report to the secretary and a  
16 recommended order, which shall contain a finding of fact and a conclusion of law.  
17 If the secretary finds upon written request of the hearing officer that additional time  
18 is needed, then the secretary may grant an extension. The hearing officer shall  
19 serve a copy of his or her report and recommended order upon all parties of record  
20 to the proceeding, and they shall be granted the right to file within fourteen (14)  
21 days of receipt exceptions thereto. The secretary shall consider the report,  
22 exceptions, and recommended order and decide the case. The decision shall be  
23 served by mail upon all parties and shall be a final order of the cabinet.

24 (2) Any party to a hearing conducted pursuant to this chapter may be represented by  
25 counsel, make oral or written argument, offer testimony, cross-examine witnesses,  
26 or take any combination of such actions. The record of the hearing shall be open to  
27 public inspection, and copies thereof shall be made available to any person upon

1 payment of the actual cost of reproducing the original.

2 (3) In connection with a hearing, the cabinet shall issue subpoenas in response to any  
3 reasonable request by any party to the hearing requiring the attendance and  
4 testimony of witnesses and the production of evidence relevant to any matter  
5 involved in the hearing. In case of refusal to obey a subpoena issued to any person,  
6 the Franklin Circuit Court, upon application by the cabinet, may issue to that person  
7 an order requiring him or her to appear before the cabinet, ~~there~~ to produce  
8 documentary evidence if~~s~~ ordered or to give evidence touching the matter under  
9 investigation or in question. ~~; and~~ Any failure to obey the order~~of the court~~ may  
10 be punished by the court as a contempt of court.

11 (4) All hearings conducted pursuant to this chapter shall be open to the public.

12 (5) *In all hearings conducted pursuant to this chapter, the ultimate burden of*  
13 *persuasion shall be met by clear and convincing evidence in the record, unless*  
14 *otherwise provided by statute or federal law.*

15 (6) *Any party that prevails against the cabinet in an action initiated by the cabinet*  
16 *shall be awarded costs and reasonable attorney's fees.*

17 ➔Section 3. KRS 224.10-440 is amended to read as follows:

18 (1) All hearings under this chapter shall be held before a qualified hearing officer, who  
19 may be a full-time employee of the cabinet, serve by contract, or be paid on a per  
20 diem basis in the discretion of the cabinet. After the conclusion of the hearing, the  
21 hearing officer shall make to the secretary a report and recommended order, which  
22 shall contain a finding of fact and a conclusion of law. The hearing officer shall  
23 serve a copy of his or her report and recommended order upon all parties of record  
24 to the proceeding, and they shall be granted the right to file within fourteen (14)  
25 days of receipt exceptions thereto. The secretary shall consider the report,  
26 exceptions, and recommended order and decide the case within ninety (90) days.  
27 The secretary, for good cause, may take no more than an additional forty-five (45)

1        days ~~if[provided]~~ the secretary gives the parties written notice stating the good  
2        cause within the original ninety (90) day period. The secretary's decision shall be  
3        served by mail upon all parties and shall be a final order of the cabinet.

4        (2) Any party to a hearing under this subsection may be represented by counsel, ~~{ may}~~  
5        make oral or written argument, offer testimony, cross-examine witnesses, or take  
6        any combination of these actions. The secretary may promulgate administrative  
7        regulations to require that direct testimony be filed in writing prior to the hearing, ~~{~~  
8        ~~either}~~ for all or some categories of cases. The record of the hearing shall be open to  
9        public inspection, and copies thereof shall be made available to any person upon  
10      payment of the actual cost of reproducing the original except as provided in KRS  
11      224.10-210.

12      (3) Unless all parties to the case agree in writing otherwise, the hearing officer shall  
13      conduct the hearing, complete the report and recommended order, and transmit the  
14      report and recommended order to the secretary no later than one hundred eighty  
15      (180) days after service of the written notice described in KRS 224.10-420(1) upon  
16      all named parties or service of the petition and demand for hearing pursuant to KRS  
17      224.10-420(2) upon all named parties, whichever is applicable. Upon written  
18      request of the hearing officer or any party to the hearing, the secretary or secretary's  
19      designee, for good cause shown, may extend this deadline for a period not to exceed  
20      ninety (90) days. The secretary shall grant no more than two (2) ninety (90) day  
21      extensions under this subsection, unless the secretary and all parties to the case  
22      agree~~{to the contrary}~~ in writing otherwise.

23      (4) The secretary may promulgate administrative regulations to establish procedures  
24      and deadlines for submitting a written request for an extension pursuant to  
25      subsection (3) of this section. The secretary shall require that any written request for  
26      extension include a proposed date certain by which the hearing or report and  
27      recommended order, or both, will be completed.

1       (5) Upon the failure of the hearing officer to make a report and recommended order to  
2       the secretary within the deadline set forth in subsection (3) of this section, including  
3       any extensions granted by the secretary pursuant to subsections (3) and (4) of this  
4       section, the secretary shall remove the case from the hearing officer. The secretary  
5       shall then:

6       (a) Decide the case within ninety (90) days after allowing the parties to  
7       supplement the record, if necessary; or

8       (b) Transfer the case to another qualified hearing officer for completion of the  
9       hearing or report and recommended order, or both, by a new deadline set by  
10       the secretary. The secretary shall make no more than one (1) transfer pursuant  
11       to this subsection.

12       (6) All hearings conducted pursuant to this chapter shall be open to the public except as  
13       provided in KRS 224.10-210.

14       (7) *In all hearings conducted pursuant to this chapter, the ultimate burden of*  
15       *persuasion shall be met by clear and convincing evidence in the record, unless*  
16       *otherwise provided by statute or federal law.*

17       (8) *Any party that prevails against the cabinet in an action initiated by the cabinet*  
18       *shall be awarded costs and reasonable attorney's fees.*