

### **13B.020 Application of chapter -- Exemptions.**

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
  - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
  - (a) Finance and Administration Cabinet
    1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

- b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    - 2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
- (b) Cabinet for Health and Family Services
  - 1. Office of Health Policy
    - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
    - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
  - 2. Department for Community Based Services
    - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
  - 3. Department for Disability Determination Services
    - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
- (c) Justice and Public Safety Cabinet
  - 1. Department of Kentucky State Police
    - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
  - 2. Department of Corrections
    - a. Parole Board hearings conducted under authority of KRS Chapter 439
    - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
    - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
  - 3. Department of Juvenile Justice
    - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Energy and Environment Cabinet
  - 1. Department for Natural Resources
    - a. Surface mining hearings conducted under authority of KRS Chapter 350
  - 2. Department for Environmental Protection
    - a. Wild River hearings conducted under authority of KRS Chapter 146

- b. Water resources hearings conducted under authority of KRS Chapter 151
    - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
    - d. Environmental protection hearings conducted under authority of KRS Chapter 224
    - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
  - 3. Public Service Commission
    - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Labor Cabinet
  - 1. Department of Workers' Claims
    - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
  - 2. Kentucky Occupational Safety and Health Review Commission
    - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f) Public Protection Cabinet
  - 1. Board of Claims
    - a. Liability hearings conducted under authority of KRS Chapter 44
- (g) Education and Workforce Development Cabinet
  - 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- (h) Secretary of State
  - 1. Registry of Election Finance
    - a. Campaign finance hearings conducted under authority of KRS Chapter 121
- (i) State universities and colleges
  - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
  - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
  - 3. Campus residency hearings conducted under authority of KRS Chapter 164
  - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
  - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
  - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
  - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 12, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 11, sec. 6, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 85, sec. 13, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 181, sec. 2, effective July 12, 2006; ch. 211, sec. 8, effective July 12, 2006; and ch. 251, sec. 1, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 99, sec. 13, effective June 20, 2005; and ch. 123, sec. 8, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 14, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 63, effective July 15, 1998; and ch. 538, sec. 12, effective April 13, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 2, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 2, effective July 15, 1996.

**Legislative Research Commission Note (7/15/98).** This section was amended by 1998 Ky. Acts chs. 426 and 538. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 538, which was a nonrevisory Act, prevails under KRS 7.136(3).