1 AN ACT relating to student discipline at public postsecondary education
2 institutions.
3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***
4 ➔Section 1. KRS 164.370 is amended to read as follows:
5 ***(1) For the purposes of this section,***
6 ***(a) "Complainant" means a student who has formally filed a complaint***
7 ***alleging that the student is the victim of a violation of the code for student***
8 ***conduct promulgated by the governing body of an institution;***
9 ***(b) "Institution" means the following public postsecondary education***
10 ***institutions: University of Kentucky, University of Louisville, Eastern***
11 ***Kentucky University, Kentucky State University, Morehead State University,***
12 ***Murray State University, Northern Kentucky University, and Western***
13 ***Kentucky University;***
14 ***(c) "Governing board" means the Boards of Trustees or Boards of Regents of***
15 ***an institution;***
16 ***(d) "Participant" means a respondent or a complainant;***
17 ***(e) "Respondent" means a student who has been formally accused of a***
18 ***violation of the code for student conduct promulgated by the governing***
19 ***board of an institution;***
20 ***(f) "Student" has the same meaning as in KRS 164.348; and***
21 ***(g) "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C.***
22 ***sec. 1681 et seq., applicable federal regulations, and binding federal judicial***
23 ***precedent.***
24 ***(2) Each governing board shall adopt a code for student conduct that clearly sets***
25 ***forth the rules for nonacademic student conduct and establishes disciplinary***
26 ***procedures to enforce those rules. The disciplinary procedures shall set forth***
27 ***rules for establishing the admissibility of evidence that are consistent with KRS***

1 *13B.090, KRE 412, and Title IX.*
2 *(3) At a minimum, when a violation is punishable by a suspension or expulsion from*
3 *the institution or termination of a respondent's residence in campus housing, the*
4 *disciplinary procedures contained in the code for student conduct shall:*
5 *(a) 1. Afford a respondent the presumption that the respondent is innocent*
6 *and has not committed a violation of the code for student conduct*
7 *until the institution has established every element of the alleged*
8 *violation; and*
9 *2. Clearly state that the presumption afforded by subparagraph 1. of this*
10 *paragraph shall not be construed to mean that the complainant or any*
11 *witness has presented false testimony or evidence;*
12 *(b) Provide a participant written notice of:*
13 *1. A formal charge of an alleged violation and the specific details of the*
14 *facts upon which the alleged violation is based;*
15 *2. The rights of the participant as set forth in this section, the code for*
16 *student conduct, and any other applicable law; and*
17 *3. The date, time, and location of each phase of the disciplinary process*
18 *at least:*
19 *a. Three (3) business day prior to any scheduled event at which the*
20 *participant is expected to appear, including any meeting or*
21 *interview that serves an investigative purpose; and*
22 *b. Ten (10) business days prior to any disciplinary hearing;*
23 *(c) 1. Require the institution to maintain an administrative file of the*
24 *disciplinary proceedings. The file shall include all documents and*
25 *evidence in the institution's possession or control relevant to the*
26 *alleged violation and the institution's investigation thereof, including*
27 *but not limited to exculpatory evidence, documents submitted by any*

1 *participant, and the institution's choice of a video recording, an audio*
2 *recording, or a transcript of any disciplinary hearing ultimately held*
3 *in the matter but shall not include privileged documents or internal*
4 *memorandums that the institution does not intend to introduce as*
5 *evidence at any hearing on the matter;*
6 *2. Provide a participant reasonable continuing access to the*
7 *administrative file and the ability to make copies of all evidence or*
8 *document contained therein beginning at least seven (7) business days*
9 *prior to any disciplinary hearing, or sooner if otherwise specified*
10 *under federal law, except that individual portions of the administrative*
11 *file may be redacted if disclosure of the evidence is otherwise*
12 *prohibited by law;*
13 *3. Require that all documentary or tangible evidence that the institution*
14 *or a participant intends to introduce at a disciplinary hearing be*
15 *submitted to the administrative file at least three (3) business days*
16 *prior to the disciplinary hearing, or sooner if otherwise specified*
17 *under federal law. Any documentary or tangible evidence that is*
18 *submitted less than three (3) days prior to the disciplinary hearing*
19 *shall only be admissible upon the discretion of the hearing officer. An*
20 *institution shall immediately notify a participant when documents and*
21 *evidence are added to the administrative file within three (3) business*
22 *days of a disciplinary hearing;*
23 *4. Require that the institution and participants submit a list of all*
24 *witnesses the institution or participant expects to call at the*
25 *disciplinary hearing to the administrative file at least three (3)*
26 *business days prior to the hearing, or sooner if otherwise specified*
27 *under federal law. Additional witnesses submitted less than three (3)*

1 *business days prior to the disciplinary hearing shall only be permitted*
2 *upon the discretion of the hearing officer. An institution shall*
3 *immediately notify a participant when a witness is added to list of*
4 *institutional witnesses within three (3) business days of a disciplinary*
5 *hearing;*
6 *5. Require that only evidence contained in the administrative file that is*
7 *determined by the hearing officer to be relevant and admissible may be*
8 *considered in the determination of whether a violation occurred,*
9 *including but not limited to the audio recording, video recording, or*
10 *transcript of any disciplinary hearing ultimately held in the matter;*
11 *and*
12 *6. Unless otherwise specified under federal law, require that the*
13 *institution maintain the administrative file:*
14 *a. Permanently if a violation results in the expulsion of a student;*
15 *or*
16 *b. In all other matters, the later of either:*
17 *i. Three (3) years after the respondent's graduation or last*
18 *date of attendance; or*
19 *ii. Three (3) years after all sanctions have been met;*
20 *(d) Provide a participant the right to:*
21 *1. Be present and participate meaningfully at any disciplinary hearing,*
22 *interim measure hearing, or other scheduled event where the rights of*
23 *the respondent are to be determined, except as restricted by Title IX;*
24 *2. Fair and impartial treatment at each phase of the disciplinary process,*
25 *which shall exclude any individual that conducts an investigation or*
26 *presides over an alternative dispute resolution process related to the*
27 *matter from participating as a hearing adjudicator or on a hearing*

1 *tribunal; and*

2 *3. Provide a limited waiver of the confidentiality of any phase of the*
3 *disciplinary process to permit the attendance of up to two (2) support*
4 *persons so long as the support persons would not violate the privacy*
5 *rights of another student or substantially delay the disciplinary*
6 *process. A support person shall have no right to participate unless the*
7 *support person is attending as an advisor to the participant in*
8 *accordance with Title IX; and*

9 *(e) In addition to the rights set forth in paragraphs (a) to (d) of this subsection,*
10 *if an alleged violation is punishable by a final order of suspension of three*
11 *(3) or more days or expulsion from the institution or termination of a*
12 *respondent's residence in campus housing, provide a participant:*

13 *1. At the participant's own expense, the right to be represented by*
14 *counsel or, if required by Title IX, an adviser, at each material phase*
15 *of the disciplinary process, including but not limited to any alternative*
16 *dispute resolution phase, meeting, hearing, or appeal of the matter.*
17 *Upon written notification of representation, this right shall require an*
18 *institution to direct all correspondence related to the disciplinary*
19 *proceeding to both the participant's counsel or advisor and to the*
20 *participant; and*

21 *2. At any hearing, the right to:*

22 *a. Make opening and closing statements;*

23 *b. Present relevant evidence; and*

24 *c. Cross-examine any testimony personally or through counsel.*
25 *Cross-examination of a student who is a victim or the*
26 *complainant that is personally conducted by a respondent shall*
27 *require:*

1 *i. The participant to submit the questions to a neutral*
2 *hearing officer. The neutral hearing officer shall ask all*
3 *relevant questions to the student witness during the live*
4 *hearing, state the specific rationale for excluding any*
5 *question, and grant a participant the right to amend a*
6 *question that has been excluded in order to cure any*
7 *objection thereto sustained by the hearing officer, and to*
8 *submit follow up questions to the student witness; and*
9 *ii. Cross-examination be restricted as required by Title IX or*
10 *other applicable federal law.*
11 *(4) (a) Subject to subsection (3) of this section, a governing board*[~~Each board of~~
12 ~~regents~~] may invest the faculty*, administration,* or a representative committee
13 of designated faculty, staff, and students with the power to suspend or expel
14 any student *from the institution, or otherwise discipline a student,* for *a*
15 *violation of*[~~ disobedience to~~] *its code for student conduct*[~~its rules, or for any~~
16 ~~other contumacy, insubordination or immoral conduct~~]. [~~In every case of~~
17 ~~suspension or expulsion of a student~~]
18 *(b) If, after a hearing on the matter, a violation results in a final order of*
19 *suspension of a respondent for three (3) or more days or expulsion of a*
20 *respondent from the institution or termination of a respondent's residence*
21 *in campus housing, the disciplinary procedures shall grant the respondent*
22 *the right to*[~~the person suspended or expelled may~~] appeal to the *governing*
23 board *or its designee*[~~ of regents~~]. The *disciplinary procedures*[~~board of~~
24 ~~regents~~] shall prescribe the manner and the mode of procedure on appeal. The
25 decision of the *governing* board *or its designee*[~~ of regents~~] shall be *a* final
26 *order*.
27 *(c) If, after a hearing on the matter, an allegation of conduct that constitutes*

1 *sexual discrimination as defined by Title IX does not result in a finding of a*
2 *violation, the disciplinary procedures shall grant the complainant the right*
3 *to appeal to the governing board or its designee in the same manner as*
4 *prescribed to the respondent pursuant to paragraph (b) of this subsection.*
5 *(d) Notwithstanding KRS 13B.020(2)(i), a respondent, or a complainant as*
6 *required by Title IX, shall have the right to appeal a final order of the*
7 *governing board or its designee in accordance with KRS 13B.140, except*
8 *that a participant who has the final order overturned for a violation of this*
9 *section shall be entitled to actual damages from the institution, including*
10 *reasonable attorney's fees and court costs.*
11 *(5) Nothing in this section shall be interpreted to:*
12 *(a) Impede or delay law enforcement officials in investigating an alleged*
13 *violation of local, state, or federal law;*
14 *(b) Impair an institution's ability to take reasonable interim measures*
15 *necessary to ensure the physical safety of members of the campus*
16 *community during a timely investigation and adjudication of a student*
17 *disciplinary issue, including but not limited to the ability to make*
18 *adjustments in student housing arrangements, impose conditions of no-*
19 *contact between the respondent and complainant, temporarily suspend a*
20 *student, or ban a student from campus. Such reasonable interim measures*
21 *shall require:*
22 *1. Within twenty-four (24) hours, written notice of the interim measures*
23 *that explains the institution's reasons for enacting the interim*
24 *measures; and*
25 *2. Within three (3) business days of the written notice, unless otherwise*
26 *waived by the respondent, an interim measure hearing to determine*
27 *whether there is substantial evidence that the respondent poses a risk*

1 *to the physical safety of a member of the campus community and that*
2 *the interim measure is appropriate to mitigate that risk. At the interim*
3 *measure hearing, a respondent shall have the right to be represented*
4 *as set forth in subsection (3)(e)1. of this section. A respondent's waiver*
5 *of the right to an interim measure hearing shall not constitute an*
6 *admission of guilt or a waiver of any additional rights afforded under*
7 *Sections 1 and 2 of this Act;*
8 *(c) Impair an institution's duty or ability to implement any measure necessary*
9 *to effectuate a valid judicial order, including but not limited to termination*
10 *of a respondent's residence in campus housing. Notwithstanding paragraph*
11 *(b) of this subsection, measures necessary to effectuate a judicial order shall*
12 *not be subject to an interim measure hearing;*
13 *(d) Impair an institution's ability to terminate a student's residence in campus*
14 *housing for any reason other than a violation of the code for student*
15 *conduct, including but not limited to a breach of any housing contract*
16 *between the student and campus housing;*
17 *(e) Impair an institution's ability to require one (1) or more complainants to*
18 *serve as a representative of a class of student victims if:*
19 *1. The class is so numerous that joinder of all members is impracticable;*
20 *2. There are questions of law or fact common to the class;*
21 *3. The claims or defenses of the representatives are typical of the claims*
22 *or defenses of the class; and*
23 *4. The representative parties will fairly and adequately protect the*
24 *interests of the class; and*
25 *(f) Limit any additional rights afforded to a student under federal law,*
26 *including Title IX or the Jeanne Clery Disclosure of Campus Security*
27 *Policy and Campus Crime Statistics Act of 1990, 20 U.S.C. sec. 1092(f).*

1 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
2 READ AS FOLLOWS:
3 *(1) By November 1, 2023, and by November 1 every five (5) years thereafter, each*
4 *institution, as defined in Section 1 of this Act, shall electronically publish a report*
5 *on student discipline to a prominent location on the institution's Web site. The*
6 *first report shall have a one (1) year reporting period and each report thereafter*
7 *shall have a five (5) year reporting period. Each report on student discipline shall*
8 *be submitted to the Interim Joint Committee on Education no later than*
9 *November 1 of the year the report is due to be published. The report on student*
10 *discipline shall include but is not limited to:*
11 *(a) Without providing any personally identifiable information, the total number*
12 *of disciplinary proceedings, including formal investigations, initiated by the*
13 *institution for an alleged violation of the institution's code for student*
14 *conduct during the reporting period, and of those, the total number and*
15 *percentage of disciplinary proceedings that resulted in:*
16 *1. A dismissal of the complaint by the institution prior to a hearing on*
17 *the matter;*
18 *2. A negotiated resolution or agreement prior to a hearing on the matter;*
19 *3. A hearing on the matter;*
20 *4. A dismissal of the complaint by the institution after a hearing on the*
21 *matter;*
22 *5. Suspension of a student;*
23 *6. Expulsion of a student;*
24 *7. Termination of a student's residence in campus housing;*
25 *8. An appeal to the governing board or its designee of the institution in*
26 *accordance with subsection (4)(b) of Section 1 of this Act; and*
27 *9. An appeal from a final decision of the governing board or its designee*

1 *of the institution in accordance with subsection (4)(c) of Section 1 of*
2 *this Act; and*
3 *(b) Without providing any personally identifiable information, for each data*
4 *point required by paragraph (a) of this subsection:*
5 *1. A summary of the basic demographics of the students that were the*
6 *subject of the disciplinary proceedings included in that figure,*
7 *including but not limited to race, gender, whether the student resided*
8 *in campus housing at the time the violation allegedly occurred, and*
9 *the approximate number of credit hours earned;*
10 *2. The specific rule in the code for student conduct alleged to have been*
11 *violated;*
12 *3. The general source of the initial information underlying the alleged*
13 *violation, including but not limited to another student, faculty, staff,*
14 *community member, or law enforcement; and*
15 *4. The percentage of students that were the subject of the disciplinary*
16 *proceedings included in that figure that were represented by an*
17 *attorney licensed to practice law in Kentucky.*
18 *(2) (a) If a public postsecondary education institution believes, due to federal law,*
19 *that any specific data point required by paragraphs (a) and (b) of subsection*
20 *(1) of this section cannot be adequately deidentified for public reporting, the*
21 *institution shall submit a request for an exemption to the reporting*
22 *requirement established in subsection (1) of this section for each specific*
23 *data point to the Attorney General. The Attorney General shall review the*
24 *request for exemption to determine whether each data point submitted can*
25 *be adequately deidentified.*
26 *(b) A request for exemption shall be submitted no later than September 1 of the*
27 *year the report is due to be published. The Attorney General shall make all*

1 *reasonable efforts to grant or deny any request for exemption within sixty*
2 *(60) days of receipt.*
3 *(c) 1. If the request for an exemption is granted, the report on student*
4 *discipline published by the institution shall clearly identify each*
5 *specific data point excluded pursuant to the exemption; and*
6 *2. If an institution fails to submit a timely request for exemption, the*
7 *Attorney General fails to grant or deny a timely filed request for*
8 *exemption in the sixty (60) day time frame, or the request for*
9 *exemption is denied and the institution continues to believe that a*
10 *specific data point cannot be adequately deidentified, the institution*
11 *shall:*
12 *a. In the report on student discipline published by the institution,*
13 *clearly identify each specific data point excluded pursuant to the*
14 *institution's objection that is not substantiated pursuant to an*
15 *exemption from the Attorney General; and*
16 *b. Submit a confidential, supplemental report to the Interim Joint*
17 *Committee on Education by December 1 each year the report on*
18 *student discipline is due. The supplemental report shall identify*
19 *each data point the institution believes cannot be adequately*
20 *deidentified and clearly set forth the reasoning for the*
21 *institution's position. The committee may consider each*
22 *supplemental report as it determines and in its discretion. Each*
23 *supplemental report, and the consideration thereof by the*
24 *committee, shall be exempt from the open records and open*
25 *meetings requirements contained in KRS Chapter 61.*
26 ➔Section 3. This Act may be cited as the Kentucky Campus Due Process
27 Protection Act.